

**LEASE AGREEMENT**

between

---

a Washington nonprofit corporation

as Landlord

and

**STATE OF WASHINGTON,**

Acting through the Department of Social and Health Services

as Tenant

DATED: \_\_, 20\_\_

Fircrest Project

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Exhibits:

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## LEASE AGREEMENT

This Lease Agreement ("Lease") is dated for reference purposes as of \_\_\_\_\_, 20\_\_ and is made by and between \_\_\_\_\_, Washington nonprofit corporation ("Landlord"), and the STATE OF WASHINGTON, acting through the Department of Social and Health Services ("Tenant").

**1. Definitions.** The definitions set forth in this Section 1 and any substantive provisions hereof are a part of this Lease. As used in this Lease, the following capitalized terms shall have the following meanings:

*ADA* means the Americans With Disabilities Act of 1990, as amended from time to time.

*Additional Rent* means the Operating Costs, Taxes, and Utilities, each as defined herein, the costs of maintenance and repair of the Premises (as provided in Section 10.1 hereof), and any other monetary sum to be paid by Tenant to Landlord or to third parties under the provisions of this Lease (other than Monthly Rent).

*Architect* means \_\_\_\_\_, the Architect for the Project selected by Landlord and Developer with Tenant's approval.

*Architect's Agreement* means the agreement between the Landlord and the Architect with respect to the Project.

*Base Shell and Core Buildings* means the Fircrest Nursing Home Facility to be constructed on the Land, exclusive of the Tenant Improvements. The Base Shell and Core Buildings are more particularly described on Exhibit B to the Development Agreement. The Base Shell and Core Buildings shall be designed, constructed and certified to at least a LEED Silver, Net Zero rating.

*Biennium* means the fiscal period of the State of Washington.

*Bond Closing* refers to the date the Bond proceeds are first made available to the Trustee. The parties anticipate that Bond Closing will occur on or before \_\_\_\_\_.

*Bonds* means those tax-exempt obligations to be issued by Landlord which satisfy the requirements of Revenue Ruling 63-20, Revenue Procedure 82-26 and other regulations, interpretations and letter rulings issued by the Internal Revenue Service with respect to such financing, from the proceeds of which Landlord intends to pay, among other things, the Fixed Price.

*Bond Purchase Contract* means the Bond Purchase Contract with respect to the Bonds to be entered into between Landlord and \_\_\_\_\_, on behalf of itself and the co-managing underwriters, as underwriter.

*Building Design Guidelines* means those program requirements, performance criteria, and environmental and physical criteria set forth in that certain "Building Design

Guidelines for \_\_\_\_\_” as issued by the Department of Social and Health Services, State of Washington, and as amended in accordance with the Request for Proposal for the Project (# \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_, as amended), for the nursing facility buildings and ancillary improvements to be constructed on the Land pursuant to a site plan permit to be issued with respect to the Project by \_\_\_\_\_.

*Buildings* mean \_\_\_\_\_, to be constructed on the Land. The Buildings will contain approximately \_\_\_\_\_ square feet of area, as more fully described in the Plans and Outline Specifications and include all HVAC, electrical and other building systems and Tenant Improvements therein.

*Business Day* means a day (i) other than a day on which banks located in the state of Washington, the City of New York, New York, or the city in which the Corporate Trust Office of the Trustee is located are required or authorized to close and (ii) on which the New York Stock Exchange is not closed.

*Code* means the Internal Revenue Code of 1986, as amended, or any successor federal income tax statute or code. Any reference to a provision of the Code shall include the applicable Department of Treasury regulations.

*Commencement Date* means the later of (i) the date of Substantial Completion of the Project or (ii) \_\_\_\_\_, 20\_\_\_\_.

*Construction Contracts* means (i) the General Construction Contract and (ii) all other contracts for construction services entered into between Landlord, or Developer, on behalf of and acting as agent for Landlord, and any Contractor, including the General Contractor, for construction of Tenant Improvements or any other portion of the Project not covered by the General Construction Contract.

*Construction Documents* means the Construction Drawings and Detailed Specifications approved by the Landlord with input from Tenant pursuant to Section 9.3 below, for the construction of the Project, including technical drawings, schedules, diagrams, plans and specifications setting forth in detail the requirements for construction of the Project and providing information customarily required for the use of the building trades.

*Construction Drawings* means Drawings setting forth in detail the requirements for the construction of the Project. As used herein, “Drawings” include all graphic and pictorial documents depicting the design, location and dimensions of the elements of the Project (including Tenant Improvements) and include plans, elevations, sections, details, schedules and diagrams for the Project. Construction Drawings may consist of separate Drawings for (i) the Buildings prepared by the Architect, and (ii) the Tenant Improvements prepared by the Interior Architect.

*Contract Documents* means the Construction Documents, the General Construction Contract and the other documents identified as Contract Documents in the General Construction Contract, and the Construction Contracts.

*Contractors* means the General Contractor and any other construction contractors with whom Landlord enters into direct contracts upon the written recommendation of Developer, or with whom the Developer on behalf of and acting as the Landlord's agent, contracts for the Project.

*Design Development Drawings* means drawings that are a consistent development of the Schematic Drawings and further define and describe all important aspects of the Project. The Design Development Drawings will serve as the basis for the Construction Drawings.

*Detailed Specifications* means all written detailed requirements for materials, equipment, construction systems, standards and workmanship for the construction of the Project.

*Developer* means \_\_\_\_\_ and permitted assigns under the Development Agreement.

*Developer Obligation Date* means the date which is \_\_\_\_\_ after execution of the Bond Purchase Contract. The Developer Obligation Date shall be extended to the extent of (i) Unavoidable Delays; provided, however, that extensions due to Unavoidable Delays shall not exceed \_\_\_\_\_ (\_\_\_\_) days; (ii) Owner-Caused Delays; and (iii) delays incurred as a result of the time required to remediate Hazardous Substances existing in, on or emanating from the Land as of the Effective Date, provided Developer shall use reasonable efforts to minimize the impact on the Project Schedule due to such remediation. Absent such extensions, Developer expects that the Developer Obligation Date will be \_\_\_\_\_, 20\_\_\_\_.

*Development Agreement* means that certain Development Agreement to be entered into between Developer and Landlord on or before Bond Closing, as amended from time to time which provides for the development, design, permitting and construction of the Project.

*Department* means the Department of Social and Health Services, an agency of the State of Washington.

*Effective Date* means the date that this Lease is fully executed, acknowledged and delivered by Landlord and Tenant.

*Environmental Laws* means, as amended from time to time, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*, Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, Federal Hazardous Materials Transportation Control Act, 42 U.S.C. § 1801 *et seq.*, Federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, Federal Water Pollution Control Act, Federal Water Act of 1977, 93 U.S.C. § 1251 *et seq.*, Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. § 136 *et seq.*, Federal Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, Federal Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, Washington Water Pollution Control Act, RCW ch. 90.48, Washington Clean Air Act, RCW ch. 70.94, Washington Solid Waste Management Recovery and Recycling Act, RCW ch. 70.95, Washington Hazardous Waste Management Act, RCW ch. 70.105, Washington Hazardous Waste Fees Act, RCW ch. 70.95E, Washington Model Toxics Control Act, RCW ch. 70.105D, Washington Nuclear Energy and Radiation Act, RCW ch. 70.98, Washington Radioactive Waste Storage and Transportation Act of 1980, RCW ch. 70.99, Washington Underground Petroleum Storage Tanks Act, RCW ch. 70.148.



*Event(s) of Default* has the meaning set forth in Section 22 of this Lease.

*Expiration Date* means the earliest of: (1) the date which is \_\_\_\_\_ (\_\_) years after the Effective Date; or (2) the date on which the Ground Lease is terminated as a result of payment or defeasance in full of the Bonds; or (iii) any date under which this Lease terminates in accordance with its terms.

*Final Acceptance* means that the following events have occurred:

**(a)** The \_\_\_\_\_ has issued all Temporary Certificates of Occupancy, such that Tenant is permitted to and could, pursuant to such issued certificates of occupancy, physically occupy the Project for the Permitted Use.

**(b)** Each Contractor shall have issued its "Certificate of Substantial Completion" together with its Affidavit of Payment of Debts and Claims (AIA Forms 706 and 706A), together with final waivers and releases of lien in form satisfactory to Landlord from all Contractors and their subcontractors performing work on site.

**(c)** Landlord, Developer and the Tenant shall have agreed upon the estimated costs of the Punch List items and \_\_\_\_% of such estimated cost shall be withheld by the Trustee in the Bond Proceeds Account until the Punch List items have been completed to the reasonable satisfaction of Landlord and Tenant. When the Punch List items have been completed, the Development Agreement shall require that the Developer shall notify Landlord and, upon Landlord's reasonable satisfaction that the Punch List items have been completed, Landlord shall deliver its requisition to the Trustee for payment of the funds withheld by the Trustee under Section 12(d)(iii) of the Development Agreement.

**(d)** Developer shall have submitted its final Project Application for Payment together with evidence reasonably satisfactory to Landlord that all construction costs have been paid in full, including evidence of full payment for any personal property installed on the Land as part of the Project Costs.

**(e)** The period for filing construction liens has expired or releases or discharges of construction liens in form and substance satisfactory to Landlord have been obtained by the Developer from all Contractors and their subcontractors performing work on site in accordance with all Construction Contracts.

**(f)** Architect shall have issued its "Certificate of Final Completion" and the Landlord shall have received the certificate of any other architect or engineer requested by the Landlord.

**(g)** The General Contractor shall have issued a certificate that (i) the Project has been finally completed in substantial accordance with the Contract Documents, and (ii) no Hazardous Substances as defined in said certificate were incorporated into the structure of the Project.

**(h)** Developer shall have delivered to Landlord a written report showing the allocation of Project Costs among the categories of the Project Budget and the remaining

specified dollar amount of the Tenant's Contingency, Project Contingency and the undisbursed portion of the Developer's Fee.

(i) Landlord and Trustee shall have each received endorsements to their Title Policies, if any, dated as of and issued on the date of Final Acceptance, which shall insure Landlord and Trustee, as applicable: (i) against any liens for labor or materials, whether or not of record, which may have arisen in connection with the construction of the Project, and (ii) show no additional exceptions to its Title Policy, if any, other than those approved by or arising through Landlord.

(j) Developer shall have delivered to Landlord and Tenant its affidavit that the Construction Contracts with Contractors and subcontractors of such Contractors for the Project required such parties to pay the prevailing wage in accordance with Section 34 below; and

(k) Developer shall have completed and delivered the matters required under Section 14 of the Development Agreement.

*Final Payment* means payment to the Developer, the General Contractor and any other Contractors by Landlord following Final Acceptance of the Project.

*Fiscal Year* means a period of twelve (12) consecutive months commencing July 1 and terminating June 30<sup>th</sup> of each year during the Term.

*Fixed Price* means \$ \_\_\_\_\_, the total amount to be paid by Landlord for the Project Costs excluding Tenant's Contingency, Other Costs and Additional Mitigation Costs, for the completion of the design, development, permitting and construction of the Project, and is the price to be paid by Landlord for such Project Costs. The Fixed Price includes, as an allowance item, an estimate of the cost of the Tenant Improvements up to the amount of the Tenant Improvement Allowance, but does not include Tenant's Contingency, Other Costs or Additional Mitigation Costs. A detailed description of Project Costs by line item and category is set forth in the Project Budget. The parties contemplate that upon completion of detailed Construction Documents for the Tenant Improvements, Landlord and the General Contractor, with Developer's approval, shall enter into a change order to the General Construction Contract to establish a guaranteed maximum price for construction of the Tenant Improvements.

*General Construction Contract* means the agreement between the Landlord and the General Contractor for the construction of the Project.

*General Contractor* means \_\_\_\_\_.

*Ground Lease* means the long-term ground lease entered into of even date herewith or to be entered into, by \_\_\_\_\_ as the tenant and the State of Washington, acting through the Department of \_\_\_\_\_ as landlord for the Land described on the attached Exhibit C.

*Hazardous Substance(s)* means any material, waste, substance, industrial waste, toxic waste, chemical contaminant, petroleum, asbestos, polychlorinated biphenyls, radioactive materials, or other substances regulated or classified by Environmental Laws as hazardous, toxic or lethal to persons or property.

*Indenture* means the indenture of trust or other agreements or documents pursuant to which Landlord will cause the issuance of the Bonds.

*Interior Architect* means \_\_\_\_\_, the architect for the Tenant Improvements selected by Landlord and Developer with Tenant's approval.

*Interior Design Contract* means the contract for space planning design services in connection with the design of Tenant Improvements entered into by Landlord and the Interior Architect with Tenant's approval.

*Land* means the real property located in King County, Washington, as more particularly described in Exhibit C attached hereto and by this reference incorporated herein.

*Landlord* means \_\_\_\_\_, a Washington nonprofit corporation, its successors and permitted assigns.

*Laws* mean any constitution, statute, ordinance, regulation, rule, resolution, judicial decision, administrative order or other requirement of any federal, state, county, municipal or other governmental agency or authority having jurisdiction over the parties or the Premises, or both, in effect either at the time of execution of this Lease or at any time during the Term, including without limitation, any regulation or order of a quasi official entity or body (e.g., board of fire examiners or public utilities) including, but not limited to Environmental Laws and all rules, laws and regulations issued thereunder, as the same may be amended from time to time.

*Lease Year* means each succeeding year of the Term, commencing with the Commencement Date and ending with the date which is one (1) day less than one (1) year later.

*Liens* mean any lien, charge, security interest or encumbrance, except the Indenture and the Mortgage, which may be attached to, upon or against the Premises or any portion thereof. Liens shall specifically exclude (i) those permitted exceptions affecting the Land as of the date hereof and more specifically described on the attached Exhibit G, and (ii) any subsequent equipment or financing leases, purchase money security interests, or other financial liens against the Premises or any fixtures constructed as part of the Project therein that are specifically approved in writing in advance by Tenant hereunder and by the State, as landlord under the Ground Lease.

*DNS* means the SEPA Determination of Non-Significance dated \_\_\_\_\_, 20\_\_ issued by the Department of \_\_\_\_\_ of the State of Washington.

*Monthly Rent* means the monthly rent payable by Tenant under this Lease from the Commencement Date and thereafter during the Term in the amounts for each Lease Year as set forth on the Schedule of Monthly Rent annexed hereto as Exhibit A and by this reference incorporated herein, as such Schedule of Monthly Rent may be adjusted from time to time in accordance with the provisions of this Lease.

*Mortgage* means the: (a) Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, executed by Landlord in connection with the issuance of the Bonds; (b) Assignment of Leases and Cash Collateral, executed by Landlord in connection with the issuance of the Bonds; (c) applicable Uniform

Commercial Code financing statements; and (d) other security documents executed by Landlord in connection with or to secure the Bonds.

*Notice Address* means, as to each of the Notice Parties, its respective address as specified in or pursuant to Section 33.7 of this Lease.

*Notice Parties* means each of Landlord, OST, Tenant and Trustee.

*OFM* means the State Office of Financial Management and shall include any agency of the State succeeding to the functions of OFM.

*Operating Costs* has the meaning given to it in Section 5 of this Lease.

*OST* means the Office of State Treasurer and shall include any agency of the State succeeding to the functions of OST.

*Other Costs* means the costs totaling \$ \_\_\_\_\_ listed under the heading "Other Costs" on the Project Budget attached to the Development Agreement as Exhibit C which include Owner's miscellaneous costs such as auditing and construction oversight and Tenant's administrative costs. Other Costs shall be considered Project Costs but shall not be included in the determination of the Fixed Price.

*Owner-Caused Delay* means any period of delay in the overall progress of design, construction, and completion of the Project, including Tenant Improvements, after the exercise of reasonable due diligence by Developer and General Contractor to mitigate the effects thereof, that is caused by Landlord initiated change orders to the General Construction Contract or by Landlord's failure to approve, disapprove, decide, or otherwise respond to Developer with respect to a particular item for which Landlord's response is required under the Development Agreement or under the General Construction Contract, or failure to deliver plans, information, specifications, or other information within the time frames required under the Development Agreement or the General Construction Contract. However, Owner-Caused Delay shall not include: (i) delay to the extent caused by Developer's failure to provide, within the time frames allowed under the Development Agreement, draw requests, architect's certifications, progress completion certifications, copies of change orders and supporting documentation, shop drawings, schedules, costs, invoices, job progress reports, or other documents or information which Landlord is entitled to receive under the Development Agreement or which is reasonably requested by Landlord in connection with any such decision or response, or (ii) delay to the extent caused by the existence of reasonable cause to suspect that construction of the Project or Tenant Improvements or any other services provided by Developer under the Development Agreement have not been performed in accordance with Construction Documents and other requirements under the Development Agreement, in which case Owner-Caused Delay shall not include the amount of additional time reasonably needed by Landlord to determine whether such construction or other services conform to all requirements under the Development Agreement, so long as Landlord proceeds with all reasonable diligence to make such determination. To facilitate timeliness in Landlord's communications with Developer over matters relating to design or construction of the Project and to minimize the possibility of Owner-Caused Delay, Developer shall alert Landlord to deadlines for approvals, decisions or other responses that Landlord must provide thereunder, including,

among other methods, attachment of “deadline cover sheets” on any submissions to Landlord that require response by a particular deadline or distribution of weekly calendars that show deadlines imposed on Landlord. If Developer at any time believes that an instance of Owner-Caused Delay has occurred that has directly caused or will directly cause an increase in Project Costs or extension of the Developer Obligation Date, Developer shall send a written notification to Landlord within \_\_\_\_ (\_\_) days of the occurrence of such alleged Owner-Caused Delay explaining the alleged event that constituted such Owner-Caused Delay, specifying the period of alleged Owner-Caused Delay, describing how the alleged Owner-Caused Delay adversely impacted the Project Schedule and identifying any incremental increase in Project Costs that are identifiable or reasonably foreseeable as a direct result of such Owner-Caused Delay. Any disputes between Developer and Landlord over Project Costs attributable to Owner-Caused Delay shall not be a reason to stop or delay construction of the Project and shall be resolved by Developer and Landlord as expeditiously as possible, either by mutual agreement of the parties thereto or in accordance with the dispute resolution mechanisms described in Section 24 of the Development Agreement. Where additional Project Costs are incurred or the Project Schedule is adversely impacted as a result of a combination of Owner-Caused Delay and (i) failure of Developer to provide, within the time frames allowed under the Development Agreement, draw requests, architect’s certifications, progress completion certifications, copies of change orders and supporting documentation, shop drawings, schedules, costs, invoices, job progress reports, or other documents or information which Landlord is entitled to receive under the Development Agreement or which is reasonably requested by Landlord in connection with any such decision or response required thereunder, or (ii) delay caused by the existence of reasonable cause to suspect that construction of the Project or Tenant Improvements or any other services provided by Developer under the Development Agreement have not been performed in accordance with Construction Documents and other requirements under the Development Agreement, then, notwithstanding any other provision of the Development Agreement to the contrary, (i) Costs Resulting From Owner-Caused Delay shall be only the portion of such costs fairly attributable to the actions or omissions of Landlord and (ii) any extension of the Developer Obligation Date shall be permitted only to the extent fairly attributable to the actions or omissions of Landlord.

*Permitted Termination Date* means the date upon which a Permitted Termination Event is effective, as stated in a written notice from Tenant to Landlord.

*Permitted Termination Event* means the occurrence of the following: (1)(a) the State Legislature elects not to appropriate sufficient funds within any biennial budget for the purpose of paying Rent in the next occurring Biennium or, (b) the Governor of the State issues an Executive Order mandating an emergency reduction in funding, and (2) the Tenant delivers written notice to the Landlord and Trustee within \_\_\_\_ days following the enactment of such budget or within \_\_\_\_ days following such an emergency reduction in funding, as the case may be, describing the failure to appropriate the necessary funds or insufficiency of funds as a result of an emergency reduction in funding and stating the Permitted Termination Date.

*Permitted Use* has the meaning given to it in Section 7 of this Lease.

*Plans and Outline Specifications* are the most recent renditions for the Base Shell and Core Buildings, a schedule of which plans and specifications are attached to the Development Agreement as Exhibit D and incorporated herein by this reference.

*Premises* means the Land, the \_\_\_\_\_ and any other improvements to be constructed on the Land pursuant to the Development Agreement.

*Project* means the total design and construction, including, without limitation, demolition of existing improvements on the Land, all site work including all road improvements required under Permits, utility relocation and installation of utilities as required to serve the Project, including all professional design services, and all labor, materials and equipment used or incorporated in such design and construction of a nursing home (Fircrest) in Shoreline, Washington to be constructed on the Land, Tenant Improvements, and other ancillary improvements all as more fully described in the Building Design Guidelines and Plans and Outline Specifications, including all HVAC, electrical and other building systems. The Project must be designed, constructed and certified to at least LEED Silver, Net Zero standards for maximum energy efficiency and lower operating and maintenance costs. The Project shall include work that is consistent with and reasonably inferable from the approved Project Requirements as being necessary to produce the intended results.

*Project Budget* means the budget for development of the Project attached to the Development Agreement as Exhibit C, as revised from time to time by Developer and Landlord, in accordance with the Development Agreement.

*Project Contingency* means the contingency by that name set forth in the Project Budget.

*Project Costs* mean any payments owing under the Ground Lease prior to the Commencement Date of this Lease, and all costs for the completion of the development, design, permitting and construction of the Project, including, without limitation, all demolition costs, all site work, including all road improvements required under Permits, Additional Mitigation, utility relocation and installation of utilities as required to serve the Project, all permit fees, all costs of the Base Shell and Core Buildings, HVAC, electrical and other building systems, all costs of Tenant Improvements, all costs of fixtures, furnishings and equipment described in the Construction Documents, all costs of architectural services provided by the Architect under the Architect's Agreement, all costs of services provided by the Interior Architect under the Interior Design Contract with respect to the Tenant Improvements, all other professional design and other services provided by Contractors or other professionals engaged by the Developer or General Contractor, all amounts paid to the General Contractor under the General Construction Contract including all labor, material, and equipment used or incorporated in such design and construction, all amounts paid to other Contractors and subcontractors, if any, under any other Construction Contract or subcontract entered into by Landlord upon the written approval of Developer or by the Developer on behalf of and acting as the Landlord's agent in connection with the Project, including all labor, material and equipment used or incorporated in such design and construction, services provided by engineers, environmental consultants, surveyors and other professionals and consultants retained by Developer in connection with the Project, Tenant's Contingency, Other Costs, Developer's Overhead Allowance, Developer's Fee (as defined in the Development Agreement), insurance, bonds (other than the Bonds), real estate brokerage and leasing commissions, if any, art work approved by Tenant under the State Arts in Public Places Program, applicable state and local retail sales, business and occupation and other taxes (including real property taxes and assessments accruing prior to Substantial Completion of the Project), costs of

any off-site improvements (e.g., traffic lights, roundabouts, road improvements) required as a condition to or in connection with the development or construction of the Project, plus the Project Contingency; excluding only (a) Tenant's Personal Property and any taxes thereon (which shall be paid by Tenant at its sole cost and expense), (b) Financing Costs, (c) costs of removing or remediating any Hazardous Substances existing in, on or emanating from the Land as of the Effective Date, in excess of the amount specifically set forth in the Project Budget for environmental remediation; and (d) Costs Not To Be Reimbursed (as defined in the Development Agreement).

*Project Requirements* means the Building Design Guidelines, applicable provisions from the Request for Proposal for the Project # \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_ (signed by Developer \_\_\_\_\_, 20\_\_), and the DNS,[Additional language to be inserted during contract negotiations]

*Project Schedule* means the schedule for development and construction of the Project as revised from time to time by Developer and Landlord; provided, however, that in no event shall the Project Schedule provide for Substantial Completion to occur later than \_\_\_\_\_ (\_\_\_\_) months after full execution of the Bond Purchase Contract, without the concurrence of Tenant. The initial Project Schedule is set forth in Exhibit B attached hereto and by this reference incorporated herein.

*Punch List* means a list of items required to be completed prior to Final Acceptance that are minor items which do not affect Landlord's ability to lease the Premises to Tenant and do not affect Tenant's ability to use the Premises for their Permitted Use.

*Rent* means Monthly Rent and Additional Rent, each as defined herein.

*Requirements of Law* means all requirements relating to land and building construction (including those specifically applicable to the Permitted Use), including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety, accessibility, and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with all the foregoing and other applicable statutes, rules, orders, regulations, laws, ordinances, and covenants, conditions and restrictions, which now apply to and/or affect the design, construction, existence, intended use, operation and/or occupancy of the Land, the Premises or any part thereof.

*Schematic Drawings* means drawings establishing the general scope, conceptual design, and scale and relationship among the components of the Project.

*State* means the State of Washington.

*State Nonprofit Corporation Act* means the Washington Nonprofit Corporation Act, Chapter 24.03 RCW, as amended from time to time.

*Substantial Completion of the Project* means that each of the following events shall have occurred with respect to the Project:

(a) Developer shall have notified Landlord in writing that the Project, including all Tenant Improvements are Substantially Complete in substantial accordance with the Contract Documents, subject only to the completion of normal Punch List items;

(b) Architect shall have issued its "Certificate of Substantial Completion" (AIA Document G704) stating that the work under the General Construction Contract is sufficiently complete in substantial accordance with the Contract Documents to permit Tenant to occupy or utilize the Project for the Permitted Use;

(c) \_\_\_\_\_ has issued a temporary certificate of occupancy such that the Tenant is permitted to and could, pursuant to such issued certificate of occupancy, physically occupy the Premises for the Permitted Use;

(d) Landlord has received evidence from the Developer satisfactory to Landlord that all real property taxes and assessments on the Premises payable by Developer that were due and owing have been paid;

(e) Each Contractor shall have issued its "Certificate of Substantial Completion" together with its "Affidavit of Payment of Debts and Claims," (AIA Forms 706 and 706A) together with partial waivers and releases of lien for work performed prior to the date of its "Certificate of Substantial Completion" in form satisfactory to Landlord, with Tenant's concurrence, from such materialmen, laborers, Contractors and subcontractors as Landlord, with Tenant's concurrence may require; and

(f) Landlord, with Tenant's concurrence, shall have accepted the Project as Substantially Complete, subject to completion of the Punch List items agreed upon by Landlord, with Tenant's concurrence.

*Substantially Complete or Substantially Completed* means that the Project has been constructed in substantial accordance with the Contract Documents and: (a) all elements required for the functioning of the Project shall be operational and in good working order and condition including satisfying applicable ADA building requirements and the Washington State Law Against Discrimination, RCW ch. 49.60, as well as regulations adopted thereunder; (b) the Project shall be weather tight and waterproof; (c) the fire and life safety systems within the Project shall be operational and in good working order and condition; (d) the mechanical, electrical and other building systems in the Project, including the HVAC system, shall be individually tested and in good working order able to support the Project and shall also be tested to assure that Project systems operate on an integrated basis, but the HVAC system may still require final balancing work; (e) the finish work in the Project is substantially completed, including, but not limited to public lobbies, HVAC, plumbing, fire and life safety, sprinkler and electrical systems, doors, partitions, cabinetry, carpet and base, including removal of all construction debris; (f) all site utilities, sidewalks and landscaping within the Project are substantially completed and construction barricades and equipment have been removed; (g) all road improvements required under Permits have been completed; and (h) the access and security systems for the Project are installed and operational, except in each case minor Punch List items which do not materially affect use and occupancy of the Project for its Permitted Use.



*Taxes* means all real property taxes and assessments (including assessments for public improvements), license and permit fees, charges for public utilities, leasehold excise taxes, other excise taxes, levies, sales, use and occupancy taxes, any tax or charge assessed against the Rent or fair market value of the Premises and any taxes levied or assessed in addition to or in lieu of, in whole or in part, such taxes, assessments or other charges and all other governmental impositions and charges of every kind and nature, general and special, ordinary and extraordinary, foreseen and unforeseen of every character (including interest and penalties thereon) which at any time from and after the Commencement Date of this Lease may be imposed, levied upon or assessed against or which arise with respect to or constitute a lien upon the Premises (or any part thereof), the leasehold estate created by this Lease or any part thereof, or any estate, right or interest therein, or any occupancy, use or possession of or activity conducted on the Premises or any part thereof. Taxes shall not include any tax computed on the basis of Landlord's net income.

*Tenant* means State of Washington, acting through the \_\_\_\_\_ and its successors and permitted assigns as tenant under this Lease.

*Tenant's Construction Representative* means the Director of Enterprise Services or the Director's designee as may be named in a notice from Tenant to Landlord given from time to time.

*Tenant's Contingency* means the contingency in the amount of \$\_\_\_\_\_ which may be used to cover any changes in the Project resulting from any material improvements or deviation requested by Tenant from the design or level of quality reflected in the Project Requirements as set forth in Section 9.4 below or for Tenant Improvements requested by Tenant which exceed the Tenant Improvement Allowance. Tenant's Contingency is not included in the Fixed Price.

*Tenant Improvement Allowance* means, within the Fixed Price, an allowance of \$\_\_\_\_\_ to cover the design and construction costs of the Tenant Improvements. If any portion of this allowance is not used, it shall remain the property of Tenant. Prior to commencement of construction of the Tenant Improvements under the General Construction Contract, Landlord and the General Contractor shall agree upon a guaranteed maximum price for construction of the Tenant Improvements, which guaranteed maximum price shall contain a construction contingency line item for such Tenant Improvements. Upon agreement by Landlord and the General Contractor on the guaranteed maximum price for construction of the Tenant Improvements, any excess of the Tenant Improvement Allowance over the guaranteed maximum price (the "Excess Tenant Improvement Allowance") shall be automatically transferred to the Tenant's Contingency.

*Tenant Improvements* means any improvements to the interior of the Buildings beyond the Base Shell and Core Buildings, all of which are more specifically described in the Construction Documents.

*Tenant's Personal Property* means Tenant's furniture, equipment and movable property placed in the Premises by the Tenant and any property installed in or about the Premises by Tenant; provided, however, that fixtures, furnishings and equipment described in the Construction Documents as being part of the Project are not deemed to be part of Tenant's Personal Property. Tenant shall provide Tenant's Personal Property at Tenant's sole cost and expense.

*Term* means the period beginning on the Effective Date and ending on the earliest to occur of (i) termination of this Lease pursuant to Section 9.16 below, (ii) termination of this Lease pursuant to Section 20 or 24 below, (iii) a Permitted Termination Date, or (iv) the Expiration Date.

*Title Policies* means, collectively, the policy of title insurance, if any, issued to Landlord and insuring its leasehold interest in the Land (herein the “Landlord’s Title Policy”) and the lender’s policy of title insurance, if any, issued to the Trustee upon the recording of the Mortgage (the “Lender’s Title Policy”).

*Trustee* means \_\_\_\_\_, as the bond trustee under the Indenture or any duly authorized successor thereto appointed pursuant to the Indenture.

*Unavoidable Delays* means any delay in the performance by Developer or General Contractor of their obligations with respect to construction of the Project caused by strikes (other than those directly caused by the failure of the General Contractor or Developer to negotiate in good faith), acts of God, Unusually Severe Weather Conditions, unavoidable casualties, acts of the public enemy, acts of terrorists, government embargo restrictions or similar causes beyond the reasonable control of Developer or the General Contractor which, after the exercise of due diligence to mitigate the effects thereof, delay construction of the Project, other than such delays resulting from (a) Developer’s or the General Contractor’s failure to comply with the terms and provision of the Development Agreement or the General Construction Contract, (b) increased prices, or (c) unavailability of funds, provided the Fixed Price is paid in accordance with Section 9 of the Development Agreement. The Development Agreement shall provide that Unavoidable Delays will entitle Developer and the General Contractor to an extension of the Developer Obligation Date but will in no way entitle Developer to additional compensation.

*Unusually Severe Weather Conditions* means the occurrence of any of the following scenarios of precipitation, low temperature, windstorms, or snow or ice, but only if the building shell has not been sealed from weather and there remains substantial external work or other conditions that are affected by adverse weather and that will adversely affect the Developer’s ability to achieve Substantial Completion of the Project by the Developer Obligation Date:

**(a)** Daily rainfall equal to or greater than \_\_\_\_ inch within any 24 hour period.

**(b)** Daily rainfall equal to or greater than \_\_\_\_ inch during any “rainy season month” (i.e., October through June) in which the total monthly rainfall (at the end of such month) is at least \_\_\_\_% but less than \_\_\_\_% of the total average monthly rainfall for such month.

**(c)** Daily rainfall equal to or greater than \_\_\_\_ inch during any rainy season month in which the total monthly rainfall (at the end of such month) is at least 150% but less than \_\_\_\_% of the total average monthly rainfall for such month.

**(d)** Daily rainfall equal to or greater than \_\_\_\_ inch during any rainy season month in which the total monthly rainfall (at the end of such month) is at least \_\_\_\_% of the total average monthly rainfall for such month.

(e) Daily maximum temperature less than\_\_ degrees Fahrenheit for two or more consecutive weekday days which impacts critical components of the work.

(f) A combination of temperature and precipitation that results in snowfall in excess of\_\_ inches on a particular day that does not melt and substantially disappear (but for isolated shaded areas) by 7:00 a.m. on the next work day, or that results in a coating of ice during the bulk of the workday (not merely morning frost) that makes walking, transporting or loading of materials, or operation of equipment or vehicles hazardous or significantly slowed.

(g) Maximum wind gusts exceeding\_\_ mph at any time during the work day.

(h) Maximum wind gusts exceeding \_\_\_\_\_ mph during each hour of a continuous four hour period during the work day.

(i) Any other unusually inclement weather condition which causes the construction site to be in a condition such that the General Contractor orders the workers to not work on the construction site.

Weather conditions shall be measured at \_\_\_\_\_ Washington, by the Environmental Data and Information Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce. However, if Developer wishes to monitor weather at a location on or nearer to the Project site, Developer may make a proposal to install and operate, through Project Contingency, a weather monitoring station at the Premises or in the vicinity of the Premises, monitored by an independent consultant, and Landlord shall not unreasonably withhold its approval to utilization of the weather data from such closer site so long as the equipment and independent consultant appear to be capable and trustworthy and the results obtained from such monitoring appear to be reasonably reliable.

*Utilities* means all utilities and services furnished to the Premises, including without limitation, gas, electricity, water, sewer, storm water, garbage collection, and telephone service.

*Warranty Period* shall mean that period commencing on the date of Substantial Completion of the Project and expiring \_\_\_\_\_ (\_\_) years thereafter.

Capitalized terms used in this Lease and not set forth above or otherwise defined herein shall have the meaning given such terms in the Development Agreement or if not defined therein, as defined in the Indenture.

**2. Premises.** Pursuant to RCW 39.94, Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term.

**3. Term.** The Term shall commence on the Effective Date and shall expire on the Expiration Date, unless sooner terminated as provided herein; provided, however, that the obligation of the Tenant to pay Monthly Rent shall not commence until the Commencement Date. Landlord and Tenant shall confirm the Commencement Date by executing within \_\_\_\_\_ (\_\_) days after the Commencement Date, a written Confirmation of Commencement Date in the form attached hereto as Exhibit D, which Confirmation of Commencement Date shall become a part of

this Lease and be binding upon Landlord and Tenant to establish the actual Commencement Date of the Term. Landlord shall notify the OST once the Commencement Date has occurred. Notwithstanding that the obligation of Tenant to pay Monthly Rent under this Lease shall not commence until the Commencement Date, all of the other terms and provisions of this Lease shall be effective from and after the Effective Date (except as otherwise provided herein).

**4. Monthly Rent.** Tenant's obligation to pay Monthly Rent shall commence on the Commencement Date and continue until the expiration of the Term of this Lease. Landlord does hereby irrevocably authorize and direct Tenant to make all payments of Monthly Rent directly to the Trustee. The first payment of Monthly Rent shall be paid by the Tenant to the Trustee on the Commencement Date, and shall be prorated for the remainder of the month in which the Commencement Date occurs in the event that the Commencement Date is not the first day of a month. Beginning with the first month following the Commencement Date, Tenant shall pay to the Trustee at the Trustee's address set forth in Section 33.7 and without deduction, offset, prior notice or demand in advance on or before the first day of each month during the Term an amount equal to Monthly Rent; provided, however, that the Monthly Rent payments immediately following the Commencement Date may be reduced, based upon reports provided by the Trustee, by amounts on hand in the Bond Fund and available to pay principal on the Bonds in which event the Trustee shall prepare a revised Schedule of Monthly Rent which shall be substituted for the Schedule of Monthly Rent currently annexed hereto as Exhibit A. Semiannually (expected to be the Monthly Rent payments due on January 1 and July 1), the amount of Monthly Rent payable for such month shall be reduced by an amount equal to the interest earnings adjustment referenced in the following sentence which is available to pay principal and interest on the Bonds. The Indenture shall provide that Monthly Rent paid by the Tenant prior to the date due shall be deposited by the Trustee in the Revenue Fund and shall be invested at the direction of the Landlord until such funds are disbursed to Bond Owners. Tenant acknowledges that time is of the essence in payment of Monthly Rent since Landlord intends to use Monthly Rent to make principal and interest payments on the Bonds.

For recordkeeping purposes, Landlord shall provide Tenant with monthly invoices on or before the 23<sup>rd</sup> day of each month during the Term setting forth the amount of Monthly Rent due for the following month, and, based upon accumulated interest earnings in the Revenue Fund reported by the Trustee to the Landlord, the invoice setting forth the amount of Monthly Rent due shall be adjusted semiannually (expected to be the January 1 and July 1 Monthly Rent payments) to take into account accumulated interest earnings in the Revenue Fund so that the amount paid by the Tenant for such month(s) together with accumulated interest earnings will be equal to the Monthly Rent amount due for such month as set forth on the Schedule of Monthly Rent annexed hereto as Exhibit A. All such invoices shall be sent to Tenant at the address set forth in Section 33.7 below, attention Department Facilities Manager.

Monthly Rent for any partial month shall be prorated on a daily basis at the rate of 1/30 of the Monthly Rent. All payments of Rent under this Lease shall be paid in lawful money of the United States and in immediately available funds. In the event that the date on which Rent is due is not a Business Day, such Rent shall be due on the preceding Business Day.

The aggregate Monthly Rent allocable to the payment of the aggregate principal amount of the Bonds shall not exceed \$\_\_\_\_\_. The parties understand and agree that the amount of

Monthly Rent payable under this Lease during the Term shall be equal to the amount of debt service payable under the Bonds, which Monthly Rent cannot be finally determined until the Bonds are sold, but that annual Monthly Rent payable under this Lease during any Lease Year shall not exceed the aggregate estimated amount of Monthly Rent for such Lease Year as set forth on the estimated schedule of Monthly Rent attached hereto as Exhibit A. Once the Bonds are sold, the Underwriters shall prepare and submit to Landlord, Tenant and Trustee the final schedule of Monthly Rent which shall include Monthly Rent that on an aggregate basis in any Lease Year does not exceed the aggregate amount of Monthly Rent payable in such Lease Year as set forth in the estimated schedule of Monthly Rent. Such schedule of Monthly Rent shall be substituted for the estimated schedule of Monthly Rent attached to this Lease as Exhibit A on the Effective Date. Thereafter all references in this Lease to Monthly Rent shall mean the amount of Monthly Rent as set forth on the revised schedule of Monthly Rent which shall be attached to this Lease as Exhibit A, as such schedule may hereafter be revised from time to time in accordance with the provisions of this Lease.

So long as no Event of Default has occurred and is continuing under this Lease, Tenant shall have the right to direct Landlord to select maturities of Bonds to be optionally redeemed pursuant to Section 3.01(a) of the Indenture, to apply amounts redeemed against scheduled mandatory redemption payments pursuant to Section 3.01(b) of the Indenture, to direct the purchase of Bonds for cancellation pursuant to Section 3.05 of the Indenture, and to direct the issuance of Future Parity Bonds pursuant to Section 2.08 of the Indenture. The schedule of Monthly Rent (Exhibit A) amended by agreement of Landlord and Tenant to reflect such redemption, purchase for cancellation or issuance of Future Parity Bonds, shall be substituted for the schedule of Monthly Rent then attached to this Lease.

## **5. Additional Rent; Payment of Operating Costs, Taxes and Utilities.**

**5.1 Net Lease.** Tenant acknowledges that this Lease is a net lease. From and after the Commencement Date, Tenant shall pay (i) costs of maintenance and operation of the Premises in accordance with Section 10.1 hereof, (ii) pay Taxes, (iii) pay Utilities, and (iv) pay Landlord for all Operating Costs in accordance with the remainder of this Section 5. In consideration of Tenant's payment of Operating Costs, Landlord shall at all times use its best efforts to operate the Premises in an economically reasonable manner and control such Operating Costs in accordance with reasonable commercial standards prevailing in the marketplace for facilities comparable to the Premises. Prior to the Commencement Date of this Lease, all Operating Costs, if any, Taxes and Utilities relating to the Premises shall be paid by Landlord or Developer pursuant to the provisions of the Development Agreement.

**5.2 Operating Costs.** Operating Costs means any and all costs and expenses directly related to ownership and operation of the Premises actually incurred by Landlord from and after the Commencement Date of this Lease in connection with:

*(a)* the repair, replacement, operation, and maintenance of the Premises, including, without limitation, interior and exterior maintenance, all exterior doors and windows, elevators, sidewalks, driveways, interior perimeter and interior partition walls and finishes (including periodic painting thereof), exterior wall finishes, broken glass in exterior and interior doors and windows, roof, floor covering, window frames, gutters and downspouts, HVAC system,

landscaping and all other areas used in connection with the Premises, excluding, however those costs described in Section 5.3 below;

**(b)** the issuer administrative fee paid Landlord under the operating budget and the property management fees paid to the entity or entities managing the Premises under property management contracts which meet the requirements of Section 10.2 of this Lease;

**(c)** the auditing fees incurred by Landlord in connection with the preparation of the financial statements required under Section 10.2 of this Lease;

**(d)** the expenses, fees and charges paid to the operator of the \_\_\_\_\_, if any, and incurred in connection with operation of the \_\_\_\_\_, provided that Tenant has concurred with the hiring of an operator for the \_\_\_\_\_ management contract which complies with Revenue Procedure 97-13 or any successor revenue procedure issued by the Internal Revenue Service governing management, operation or other service contracts in connection with the issuance of tax-exempt obligations;

**(e)** all costs of services furnished by or through Landlord, if any, in connection with the Premises (provided, however, Landlord shall be required to obtain such services at rates generally competitive in the marketplace), including janitorial, security, if any, in connection with the Premises, gardening, landscaping, and related costs and expenses, licenses, permits, and inspection fees, the cost of supplies, materials, equipment, and tools used in connection with the maintenance, operation, repair or replacement of the Premises and all other reasonable, necessary and customary costs and expenses directly related to the operation, maintenance, repair and replacement of the Premises;

**(f)** any damage to the Premises (but not to Tenant's Personal Property) caused by breaking and entering or other criminal act not covered by insurance;

**(g)** all costs of compliance with Laws or the board of fire underwriters (or similar organization) now or hereafter constituted as applicable to the Premises;

**(h)** all insurance premiums for insurance required to be carried under this Lease;

**(i)** all rent and other payments owing by Landlord under the terms of the Ground Lease;

**(j)** all costs or liabilities that Landlord may incur under the Development Agreement, including but not limited to Costs Resulting from Owner-Caused Delay, as a result of decisions, determinations, change orders, delays, failure to make timely decisions, or other actions or omissions made by Tenant, but excluding any such costs: (i) paid from the Tenant Contingency or (ii) incurred as a result of Landlord's negligence, Landlord's intentional misconduct, or Landlord's direct breach of provisions of the Development Agreement;

**(k)** amounts for deposit in the Capital Repairs Fund pursuant to Section 10.2(d);

(l) any Rebatable Arbitrage payable pursuant to Section 4.13(b) of the Indenture;

(m) any Trustee fees and expenses payable by Landlord in accordance with the Indenture;

(n) all reasonable attorney's fees and other costs incurred by Landlord at the written request of the Tenant in efforts to enforce the provisions of the Development Agreement, any Construction Contract or other agreements relating to the Project, to remove construction liens from the Premises or to bond against them in the event of a good faith contest or to enforce product or workmanship warranties given by the Developer, the General Contractor or other Contractors or suppliers of equipment or materials (unless the Tenant directs that Landlord instead assign such claims and warranties to the Tenant in accordance with Section 5.11 hereof) but only to the extent that such costs cannot be paid from any contingency accounts, reserve accounts or funds on deposit in any account held by the Trustee and established under the Indenture or reimbursed by or recovered from Developer, General Contractor, any other Contractor or any other party who may be obligated to Landlord; and

(o) All reasonable attorney's fees and other costs incurred by Landlord, in amending or modifying the provisions of the Ground Lease, this Lease, the Development Agreement, the General Construction Contract, the Indenture, or other agreements relating to the Project, at the request of Tenant, or enforcing or administering such contracts in connection with claims and insurance awards following damage, destruction, or a covered liability, any condemnation proceeding, any future renovations to or alterations of the Premises requested by Tenant, any future financings undertaken at the request of Tenant, or any other consents, approvals, or other actions requested or taken by Landlord under any such agreements in response to requests by the Tenant.

### **5.3 Exclusions from Operating Costs.** Operating Costs shall not include:

(a) costs incurred in connection with the original construction of the Premises including but not limited to, Owner Administrative Costs as defined in the Development Agreement;

(b) routine legal, accounting or financial fees and costs incurred in administering the terms of the Development Agreement or this Lease;

(c) costs arising from Landlord's political or charitable contributions;

(d) fines, penalties and interest penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments when due or take such other actions as may be required;

(e) principal and/or interest payments required under any debt secured by a mortgage or deed of trust on the Premises;

*(f)* costs and expenses incurred in complying with Environmental Laws, except costs or expenses incurred as a result of Tenant activities (as such Environmental Laws exist as of the date of Substantial Completion of the Project);

*(g)* legal fees, accountant's fees and other expenses incurred in connection with (i) disputes with Tenant or associated with the enforcement of the terms of this Lease (unless otherwise provided for herein to be paid by Tenant); (ii) arising out of Landlord's violation of the terms of this Lease; or (iii) the defense of Landlord's title to or interest in the Premises;

*(h)* cost of any service provided to Tenant for which Landlord is reimbursed, or any other expense for which Landlord is or will be reimbursed by another source (i.e., expenses covered by insurance or warranties);

*(i)* fees to Landlord or Developer for goods or services in excess of the fees that would typically be charged by unrelated, independent persons or entities for similar goods and services;

*(j)* Taxes and Utilities paid by the Tenant directly to the applicable government authority or utility provider pursuant to the provisions of Section 5.4 and Section 6 of this Lease;

*(k)* repairs or replacements made to rectify or correct any latent defect(s) in the original design, materials or workmanship of the Project, as originally constructed;

*(l)* repairs or replacements attributable to fire or other casualty to the extent covered by the proceeds of insurance required hereunder;

*(m)* repairs or replacements necessitated by the negligence or willful misconduct of Landlord, Landlord's employees, contractors or agents;

*(n)* losses incurred by Landlord under Section 8.01(h) of the Indenture or other indemnification obligations of Landlord under the Indenture, the Ground Lease, this Lease or the Development Agreement, or any other agreement related to the Project or the Bonds, which losses shall be made whole for the benefit of the Tenant from Landlord's own funds; or

*(o)* expenses of security to, or costs of operation and repair of, to the Premises to the extent that the responsibility for such costs and expenses are assumed by Tenant pursuant to Section 10.2(f) below.

**5.4 Payment of Taxes by Tenant.** From and after the Commencement Date, Tenant shall pay all Taxes directly to the applicable governmental agency prior to delinquency and shall provide proof of such payment promptly to Landlord. To the extent Taxes or other charges can be paid in installments, Tenant may pay such Taxes in installments and shall only be liable for Taxes which accrue from and after the Commencement Date. With respect to any general or special assessments which may be levied against or upon the Premises, or which under the Laws then in force may be evidenced by improvement or other bonds or may be paid in annual



installments, only the amount of such annual installment, and interest due thereon, shall be included within the computation of Taxes.

**5.5 Real Property Tax Statements.** Tenant shall make appropriate arrangements to receive directly from the applicable governmental agency assessment notices and real property tax statements for the current year and Tenant shall provide a copy thereof promptly to Landlord.

**5.6 Right to Contest Taxes.** If Landlord receives prior notice that an appraisal of the Premises, or any portion thereof, will be conducted for real property tax purposes, Landlord shall so notify Tenant and permit Tenant to be present during such appraisal if Tenant so elects. Tenant shall have the right in Landlord's name and stead, and at Tenant's sole expense, to contest the validity or amount of any real property taxes. Landlord shall cooperate with Tenant and provide reasonable assistance with respect to any such contest, including, without limitation, such information and supporting documents as may be reasonably requested by Tenant. Notwithstanding any provision of this Lease to the contrary, Tenant shall not be required, nor shall Landlord have the right, to pay, discharge or remove any such real property tax so long as no Event of Default has occurred and Tenant is contesting the existence, amount, applicability or validity thereof by appropriate proceedings conducted in good faith with due diligence. In the event Landlord shall obtain a tax refund as a result of any such tax appeal or other proceedings Tenant shall be entitled to, and Landlord shall promptly pay to Tenant, all such tax refunds.

**5.7 Payment of Operating Costs.** From and after the Commencement Date of this Lease Tenant shall pay the Operating Costs to Landlord in the following manner. Tenant shall pay monthly, as Additional Rent, in advance, commencing on the Commencement Date, and on the first day of each month during the Term thereafter, an amount equal to one-twelfth (1/12th) of the Operating Costs for each Fiscal Year occurring from and after the Commencement Date of this Lease as reasonably estimated by Landlord. Landlord shall develop an annual operating budget for the Premises and shall submit a copy of such budget to Tenant no later than \_\_\_\_\_ (\_\_\_\_) days prior to the anticipated Commencement Date and the commencement of each Fiscal Year thereafter during the Term for review and approval by Tenant for the purpose of determining the amount of estimated Operating Costs expected to be incurred in connection with the Premises for the upcoming Fiscal Year. If Tenant requests and Landlord does not give Tenant an estimate within the time period stated above, then Tenant shall continue to make estimated payments based upon the preceding Fiscal Year's estimate until the new estimate is received. In the event that, during any Fiscal Year included within the Term, Landlord reasonably determines that the actual Operating Expenses for such year will exceed the estimated Operating Expenses, Landlord may revise such estimate by written notice to Tenant, and Tenant shall pay to Landlord, concurrent with next installment of Additional Rent due following the receipt of the revised estimate, an amount equal to the increase in the estimated installment of Additional Rent multiplied by the number of months expired during such Fiscal Year to and including the month of such payment. Subsequent installments of Additional Rent due for the balance of the then Fiscal Year shall continue at the same rate until the next Fiscal Year's estimate is prepared and submitted to Tenant as hereinabove provided. Within ninety (90) days after the end of each Fiscal Year occurring during the Term (or, if applicable, the Expiration Date), Landlord shall furnish to Tenant a reconciliation statement of the actual Operating Costs for the preceding Fiscal Year and Tenant's actual payment of the estimated Operating Costs. The reconciliation statement shall be prepared, signed and certified to

be correct by Landlord. If the actual Operating Costs for that Fiscal Year exceed the monthly payments of estimated Operating Costs made by Tenant, Tenant shall pay Landlord the deficiency within thirty (30) days after receipt of the reconciliation statement. If Tenant's payments of estimated Operating Costs made during that Fiscal Year exceed the actual Operating Costs, the excess shall be credited by Landlord to the Additional Rent next due and payable; provided, however, that such excess sum which is more than three (3) months of then estimated Operating Costs shall be paid to Tenant in cash via Landlord's check within thirty (30) days after the reconciliation statement.

**5.8 Proration.** Operating Costs shall be prorated on the basis of a 365-day year to account for any fractional portion of a Fiscal Year included in the Term at its commencement and expiration.

**5.9 Right to Audit.** Each Fiscal Year, within that period expiring \_\_\_\_\_ (\_\_\_\_) days after Tenant's receipt of the reconciliation statement provided under Section 5.7 herein, Tenant shall have the right to audit Landlord's books and records pertaining to the accuracy of the computation of Operating Costs. Copies of such audit shall be delivered to Landlord. If, after consultation with Landlord to determine such accuracy, any such audit, conducted in accordance with generally accepted accounting principles, reveals a discrepancy between Landlord's statement of the actual Operating Costs for a Fiscal Year and the amount determined by such audit, then Landlord shall reimburse to Tenant the excess amount paid by Tenant (or Tenant shall pay to Landlord the deficiency), if any; and, if such discrepancy exceeds \_\_\_\_\_ percent (\_\_\_\_%) or more, Landlord shall pay for the cost of such audit.

Tenant shall also have the right either before or after Final Acceptance to cause Landlord to undertake an audit of the books and records of Developer or any Project Contractor in accordance with Section 18(b) of the Development Agreement and to submit the results of any such audit to Tenant. Costs incurred by Landlord in connection with any such audit shall be reimbursed by Tenant.

**5.10 Warranties.** During the Term of this Lease, Landlord shall exert its good faith and diligent efforts to enforce any and all applicable warranties, express or implied, in connection with defects which may arise in the original design, materials or workmanship of the Premises as originally constructed. At Tenant's request, Landlord shall assign to Tenant any warranty rights held by Landlord with respect to the design, materials or workmanship of the Premises, as originally constructed.

**5.11 Assignment of Certain Rights; Claims Against Third Parties.** So long as Tenant is not in default under this Lease, and in the event Tenant, in its sole and absolute discretion, determines that Landlord may have a claim for damages, specific performance or other remedy at law or equity under the Development Agreement, the Architect's Agreement, any Construction Contract, any product or service warranty provided by any subcontractor or supplier, or any other contract or undertaking with respect to the Project (each a "Claim"), the Tenant may do any one of the following:

(a) Direct Landlord to take such action as the Tenant may reasonably require in pursuit of such Claim, with the costs of such action being included as part of Operating Costs;

(b) Join in any action commenced by Landlord (whether at the direction of the Landlord or otherwise); or

(c) Direct Landlord to assign its right to such Claim to the Tenant or the Tenant's designees.

Landlord shall cooperate with the Tenant and provide reasonable assistance with respect to any such Claim, including, without limitation, such information and supporting documents as may be reasonably requested by the Tenant. Tenant shall reimburse Landlord for the reasonable costs and expenses incurred by Landlord in taking any action directed by the Tenant, its agents and employees in pursuit of any Claim. Any attorneys, consultants or other experts engaged by Landlord whose fees will be reimbursed by the Tenant shall be reasonably acceptable to the Tenant and approved in writing by the Tenant in advance. Except in emergency circumstances where Landlord reasonably believes there is a risk of immediate or irreparable harm to persons or property, Landlord shall not take any action in respect of a Claim without first consulting with the Tenant.

**6. Utilities.** From and after the Commencement Date of this Lease, Tenant shall be solely responsible for and shall pay separately for all charges for Utilities used or consumed in the Premises. It is understood that Landlord shall not be required to provide any Utilities to Tenant, and Tenant shall make any necessary arrangements to have all such Utilities billed directly to and paid directly by Tenant.

**7. Use.** Tenant intends to use the Premises for a \_\_\_\_\_ and may use the Premises for any other lawful use consistent with the provisions of this Section 7 (the "Permitted Use"). Tenant acknowledges that the aggregate square footage of leasable space in the Project that is subleased by Tenant to private persons shall not exceed eight percent (8%) of leasable space unless Landlord, Trustee and Tenant receive an opinion of nationally recognized bond counsel that any such lease and/or sublease will not adversely affect the tax-exempt status of interest payable on the Bonds. Tenant has determined to its satisfaction that the Premises can be used for the Permitted Use. Tenant's use of the Premises shall be in accordance with the following:

**7.1 No Insurance Cancellation.** Tenant shall not do, bring, or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises.

**7.2 Compliance with Laws.**

(a) Prior to the Commencement Date of the Lease, liability for Hazardous Substances on the Land shall be determined in accordance with the provisions of Section 24 of the Ground Lease or the Development Agreement, as applicable.

(b) From and after the Commencement Date of this Lease, or such earlier date as Tenant occupies the Premises, Tenant shall comply with all Laws concerning the Premises and Tenant's use of the Premises, including without limitation, Environmental Laws, and

Tenant shall not use the Premises for the transportation, storage or generation of any Hazardous Substances in violation of Environmental Laws. From and after the Commencement Date of this Lease or such earlier date as Tenant occupies the Premises, and to the extent permitted by law, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all debts, demands, obligations, liens, judgments, claims, liabilities, losses, damages, cleanup costs and expenses (including reasonable attorneys' fees) now or hereafter arising in connection with the presence, transportation, storage, disposal or handling of Hazardous Substances located in, on or about the Premises caused by or resulting from the actions of Tenant, its agents or employees after the Commencement Date of this Lease or such earlier date as Tenant occupies the Premises, excluding (a) any Hazardous Substances present on the Premises prior to the Commencement Date of this Lease; (b) any such debt, demand, obligation, lien, judgment, claim, liability, loss, damage, cleanup cost or expense resulting from the actions or omissions of Landlord, Developer, the General Contractor and their respective agents, employees, contractors, subcontractors or invitees; or (c) any debt, demand, obligation, lien, judgment, claim, liability, loss, damage, cleanup cost or expense as a result of Landlord's violation of any contractual obligation under this Lease, the Indenture, or any other document executed by Landlord in connection with a Mortgage incurred in connection with Section 11 of this Lease. This indemnification shall survive the Expiration Date of this Lease.

**7.3 No Waste, Nuisance or Damage.** Tenant shall not use the Premises in any manner that will constitute waste of the Premises or nuisance and Tenant shall not do anything on the Premises that will cause damage to the Premises.

**7.4 Tax Covenants.** At all times from and after the Effective Date, Landlord (a) shall maintain its purposes and engage only in activities which are in furtherance of its purposes and which are permitted by the State Nonprofit Corporation Act; (b) will maintain its status as a nonprofit corporation under the State Nonprofit Corporation Act and as an organization described in Section 501(c)(3) of the Code whose income does not inure to the benefit of any private person; (c) shall not encumber, pledge, hypothecate or grant a security interest in all or any part of the Premises (except for the Indenture and the Mortgage which comply with the provisions of Section 11 of this Lease) or except as consented to by Tenant and Trustee in writing; (d) shall not engage in any activities related to the Premises or the Mortgage (except those specifically set forth in Sections 9 and 11 of this Lease) which would cause the transaction contemplated under this Lease to constitute an unrelated trade or business determined by applying Section 513(a) of the Code; and (e) will not take any action or omit to take any action which, if taken or omitted, would adversely affect the tax-exempt status of interest payable on the Bonds. At all times during the term of this Lease, Landlord shall not assign its rights under this Lease (except to Trustee pursuant to the Indenture and the Mortgage) without the prior written consent of Tenant and Trustee and the opinion of nationally recognized bond counsel to the effect that such assignment will not adversely affect the tax-exempt status of interest payable on the Bonds. At all times from and after the Effective Date of this Lease, Tenant covenants that it will not take any action or omit to take any action which, if taken or omitted, would adversely affect the tax-exempt status of interest payable on the Bonds.

## **8. Liens.**

**8.1 Covenant Against Liens.** Except for the Indenture and the Mortgage incurred by Landlord in compliance with the provisions of Sections 9 and 11 of this Lease to secure the Bonds, Landlord covenants and agrees that it shall not during the Term of this Lease suffer or permit any Liens to be attached to, upon or against the Premises, or any portion thereof or any Rent payable under this Lease for any reason, including without limitation, Liens arising out of the possession, use, occupancy, acquisition, construction, repair, or rebuilding of the Premises or by reason of the furnishing of labor, services, materials or equipment to the Premises or to Landlord. Tenant acknowledges that Landlord shall cause Developer, General Contractor and their respective agents, employees and subcontractors to keep the Premises free and clear of all construction liens resulting from the initial construction of the Project (including the right to contest same by appropriate proceedings conducted in good faith with due diligence) under the terms of the Development Agreement and/or the Construction Contracts prior to the Commencement Date. If Developer, General Contractor and their respective agents, employees and subcontractors shall fail to do so, Landlord shall protect, defend, indemnify and hold Tenant harmless against any such Liens. Landlord agrees to indemnify, protect, defend and hold Tenant and the Premises harmless from and against all liabilities, losses, damages, expenses and costs (including reasonable attorneys' fees and costs) incurred in connection with any such Lien. Landlord's obligations pursuant to this Section 8.1 shall survive the Expiration Date of this Lease.

**8.2 Covenant to Remove Liens.** Landlord will promptly, and in all events within \_\_\_\_\_ (\_\_\_\_) days following the attachment of same, remove and discharge any and all Liens which attach to, upon or against the Premises or any portion thereof, or any leasehold interest of Tenant created under this Lease (other than liens or encumbrances arising through the actions of Tenant). Landlord reserves the right to contest the validity or amount of any such Lien in good faith provided that, within \_\_\_\_\_ (\_\_\_\_) days after the filing of such Lien, Landlord discharges said Lien of record or records a bond which complies with the requirements of RCW 60.04.161 eliminating said Lien as an encumbrance against the Premises. In the event Landlord shall fail to so remove any such Lien, Tenant may take such action as Tenant shall reasonably determine to remove such Lien and all costs and expenses incurred by Tenant including, without limitation, amounts paid in good faith settlement of such Lien and attorneys' fees and costs shall be paid by Landlord to Tenant together with interest thereon at the rate of \_\_\_\_\_ percent (\_\_\_\_%) interest per annum from the date advanced until paid. Landlord's obligations pursuant to this Section 8.2 shall survive the Expiration Date of this Lease.

**8.3 Tenant's Disclaimer.** Notwithstanding the consent or request of Tenant, express or implied, for the performance of any labor or services or for the furnishing of any materials or equipment for any construction, alteration, addition, repair or demolition of or to the Premises (or any part thereof), NOTICE IS HEREBY GIVEN THAT TENANT WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO LANDLORD, OR ANYONE HOLDING AN INTEREST IN THE PREMISES (OR ANY PART THEREOF) THROUGH OR UNDER LANDLORD, AND THAT NO CONSTRUCTION OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES, MATERIALS OR EQUIPMENT SHALL ATTACH TO OR AFFECT THE INTEREST OF TENANT IN THE PREMISES. Nothing in this Section 8.3 shall relieve Tenant of its obligations to pay Rent hereunder.

**9. Construction of Project.** Tenant would not have entered into this Lease but for the agreement by Landlord to undertake, at Landlord's sole cost and expense, the Project, including without limitation (i) the obtaining of financing for the Project, (ii) the acquisition of a leasehold interest in the Land by way of the Ground Lease, and (iii) the construction and equipping of the Premises for use by Tenant for the Permitted Use. It is of critical importance to Tenant that the construction of the Project on the Land be completed in a timely manner, within the Project Budget and thereafter professionally managed by Landlord. Accordingly, Landlord shall diligently cause the Project to be designed, constructed and prosecuted to completion in a good and workmanlike manner and in accordance with the provisions of this Section 9, free and clear of all Liens and otherwise in accordance with the requirements of this Lease.

**9.1 Development Agreement.** To meet the requirements of this Lease for completion of the Project, on or before Bond Closing Landlord shall enter into the Development Agreement with Developer. As part of the Development Agreement, Landlord shall cause Developer to procure and maintain, at a minimum, for the duration of the Development Agreement, insurance as more particularly described in the attached Exhibit I, against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work pursuant to the Development Agreement by Developer, its agents, representatives, employees and/or subcontractors. The cost of such insurance shall be paid by Developer or its subcontractors.

**9.2 Schedule for Design and Construction.** Landlord and Tenant acknowledge and agree that the dates set forth in the initial Project Schedule attached hereto as Exhibit B and by this reference incorporated herein, and as revised from time to time in accordance with the terms of the Development Agreement, shall serve as target dates for achieving the matters set forth therein. In order to ensure to the greatest extent practicable that the Project is designed, permitted and completed on or before the dates set forth in the Project Schedule and that Substantial Completion of the Project occurs on or before the Developer Obligation Date, Landlord and Tenant shall each proceed with all necessary due diligence and in good faith to complete such matters as require action or approval on the part of Tenant and Landlord. Landlord shall, following consultation with Tenant, promptly and diligently respond to all questions and concerns raised by Developer or by the Architect, Interior Architect, Contractors, engineers or other consultants.

**(a) Notices from Developer to Landlord.** To ensure that Tenant is fully apprised of decisions required of Landlord pursuant to the Development Agreement, Landlord shall require Developer to simultaneously provide to Tenant a copy of all notices, plans and specifications, change orders, Project Applications for Payment, progress reports, invoices, cash flow reports, documents or other agreements required to be delivered by Developer to Landlord under the Development Agreement and Landlord shall also simultaneously provide to Tenant a copy of all notices, plans and specifications, change orders, invoices, cash flow reports, documents or other agreements required to be delivered by Landlord to Developer under the Development Agreement. In addition, Tenant shall have the right, but not the obligation, to attend all meetings, including without limitation, design meetings with Developer, Architect, Interior Architect and all other design professionals as appropriate in the course of development of all Construction Documents.

*(b) Notices by Tenant to Landlord and Developer.* To ensure that Developer is fully apprised of Tenant's position on Project decisions to be made by Landlord, Tenant shall have the right to simultaneously provide to Developer a copy of any notice Tenant issues to Landlord hereunder. Such notice shall be sent to the Developer at the following address by messenger:\_\_\_\_\_ or by email:\_\_\_\_\_.

*(c) Tenant's Construction Representative.* Landlord shall, and shall direct Developer to, direct all notices and submittals required to be sent to Tenant hereunder to the attention of Tenant's Construction Representative.

### **9.3 Plans and Specifications.**

*(a) Plans and Outline Specifications.* As of the date of this Lease, Tenant has reviewed and accepted the Project Requirements for the Project to be constructed on the Land including the Plans and Outline Specifications, a schedule of which is attached to the Development Agreement as Exhibit D. In addition, Tenant has reviewed and accepted the Project Budget which sets forth a detailed itemization by line item and category for all Project Costs, including the Project Contingency, Tenant Contingency, Tenant Improvement Allowance, Developer's Overhead Allowance and Developer's Fee.

*(b) Drawings and Detailed Specifications.* The Schematic Drawings for the Project have been approved by Tenant. Pursuant to Section 4 of the Development Agreement, Landlord will cause the preparation by Architect of the Design Development Drawings and the Construction Drawings and Detailed Specifications for the Base Shell and Core Buildings, and shall cause the preparation by Interior Architect of plans and specifications for Tenant Improvements, in each case for review and acceptance by Tenant. Landlord shall, following consultation with Tenant, cooperate in good faith with Developer to cause a completed design which meets all Requirements of Law and is consistent with all Project Requirements and the building quality reflected therein. Accordingly, as provided above, Developer will provide Tenant a copy of all submittals requiring Landlord's review and approval pursuant to the Development Agreement, as and when such submittals are provided to Landlord. Tenant shall only have the right to disapprove such Design Development Drawings and the Construction Drawings and Detailed Specifications which (i) do not meet the Project Requirements, or (ii) do not comply with Requirements of Law, or (iii) with respect to Drawings, such Drawings are not consistent developments of the previous Drawings approved by Tenant in all material respects, or (iv) propose changes in work or materials that would result in a material change in appearance or diminution in quality of the Project. Tenant shall have the right to give notice to Landlord disapproving the Design Development Drawings and the Construction Drawings and Detailed Specifications and Landlord shall notify Developer in the manner and within the time period set forth in the Development Agreement. If Tenant fails to issue such notice so as to allow Landlord to make timely objection or comment, such submittals shall be deemed approved by Tenant. The final Construction Drawings and Detailed Specifications setting forth in detail the requirements for the construction of the Project that have been approved by Landlord, following consultation and concurrence by Tenant, are called the Construction Documents.

*(c) Changes to Construction Documents.* There shall be no material change in the Construction Documents except as provided in Section 8 of the Development Agreement. Accordingly, Landlord has directed that Developer provide Tenant a copy of all proposed changes in the Construction Documents requiring Landlord's review and/or approval pursuant to the Development Agreement, as and when such proposed changes are provided to Landlord. Tenant shall have the right to give notice to Landlord disapproving any such proposed change in the Construction Documents within the time period set forth in the notice of any such proposed change. If Tenant fails to issue such notice so as to allow Landlord to make timely objection or comment, any such change shall be deemed approved by Tenant. If Tenant timely disapproves any such proposed change, Tenant shall notify Landlord in writing specifying the reason for its disapproval and Landlord shall so notify Developer. Tenant shall only have the right to disapprove changes which (i) are not a consistent development of the Project Requirements in all material respects, (ii) do not meet Project Requirements, (iii) do not comply with Requirements of Law, (iv) would violate the terms of any Permits, (v) would cause the Project Schedule to be adversely impacted as a result of such proposed changes, or (vi) involve proposed changes in work or materials which would result in a material change in appearance or diminution in quality of the Project. Disputes regarding a proposed change in the Construction Documents shall be subject to the dispute resolution process set forth in Section 9.6 of this Lease.

**9.4 Tenant's Contingency.** The Project Budget includes the Tenant's Contingency, which shall be allocated to Project Costs as provided herein. Tenant's Contingency is not an Other Cost and is not included in the Fixed Price. During the course of the Project, Tenant may request changes in the Project or Tenant Improvements in excess of the Tenant Improvement Allowance, but, if Tenant requires any material improvement or material deviation in the Construction Documents or the Detailed Specifications from the design or level of quality reflected in the Plans and Outline Specifications and the Project Requirements, any resulting increase in design or construction Project Costs and any costs resulting from a delay in the Project Schedule will be charged against the Tenant's Contingency until the Tenant Contingency is fully expended. No further design changes shall be permitted unless Tenant can demonstrate the availability of funds to reimburse Landlord for any resulting increase in Project Costs and for any costs resulting from a delay in the Project Schedule. To the extent that the Construction Drawings and Detailed Specifications are consistent developments of the Plans and Outline Specifications, the Fixed Price shall not be adjusted for any change in the Project Costs required to construct the Project in accordance with such Construction Documents. Additionally, at Tenant's option, the Tenant's Contingency may be used for the design and/or construction of Tenant Improvements desired by Tenant in excess of the Tenant Improvement Allowance or for Additional Mitigation. Any portion of the Tenant's Contingency unexpended upon Final Acceptance of the Project shall be disbursed to Tenant for payment of the cost of additional Tenant Improvements to the Project or deposited in the Bond Fund.

**9.5 Tenant Improvement Allowance.** The Fixed Price under the Development Agreement includes a Tenant Improvement Allowance for the design and construction of Tenant Improvements. Exhibit F to the Development Agreement sets forth the dates for delivery of the space plans by which Landlord must deliver the plans to avoid potentially jeopardizing the Project Schedule. Tenant shall act promptly and diligently in responding to all submittals relating to completion of final plans for the Tenant Improvements. If the total cost of designing and constructing the Tenant Improvements is less than the Tenant Improvement



Allowance, all excess funds in the Tenant Improvement Allowance shall initially be transferred to the Tenant's Contingency as provided in the Development Agreement and upon Final Acceptance of the Project shall be distributed in accordance with Section 9.11 below. If the total cost of designing and constructing the Tenant Improvements desired by Tenant is greater than the Tenant Improvement Allowance, Landlord shall have no obligation to cause such Tenant Improvements to be designed and constructed unless Tenant provides any necessary funds (including, in its discretion, part of the Tenant Contingency) in excess of the Tenant Improvement Allowance.

**9.6 Dispute Resolution Process.** Tenant and Landlord agree to follow the independent resolution process set forth in this Section 9.6 to resolve disputes regarding preparation of the Construction Drawings and Detailed Specifications and changes to Construction Documents in an economic and time efficient manner so that such documents conform to the requirements of this Lease, the Project Schedule is not adversely impacted, and the Project as constructed will satisfy the Project Requirements. In the event that a dispute arises between Tenant and Landlord during the design or construction of the Project regarding the adequacy of any Drawings or Specifications or the responsibility for any costs associated with any design development, addition or change (e.g., whether any design development is consistent with and reasonably inferable from the Project Requirements), the parties shall attempt to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of the design and construction of the Project is not delayed. If, however, the parties are unable to resolve the dispute within three (3) business days, either party may, by delivering written notice to the other, refer the matter to a dispute resolution mediator as set forth on the attached Exhibit F.

**9.7 Permits; Costs; Compliance with Legal Requirements.** Landlord shall cause Developer to secure, at no cost to Tenant, all Permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Project pursuant to Requirements of Law. Tenant shall join in the application for such permits or authorizations whenever such joinder is required; provided, however, Tenant shall incur no expense or liability in connection therewith. Landlord shall cause all work on the Premises during the Term to be performed in accordance with the Development Agreement and all Requirements of Law and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction over the Project and/or the Premises.

**9.8 Construction Contracts.** Landlord intends to contract for the construction of the Project directly with the General Contractor and to cause Developer to serve as construction manager in connection therewith pursuant to the provisions of the Development Agreement. Landlord shall provide Tenant with a copy of the General Construction Contract for Tenant's information. In addition, Tenant shall have the right to view, for its own information and to determine, prior to Landlord's entering into any Construction Contracts that such Construction Contract is consistent with the requirements of this Lease and the Construction Documents and the bids submitted by potential Contractors and subcontractors.

**(a) General Contractor's Insurance.** By the date of the execution of the General Construction Contract between Landlord and General Contractor, Landlord shall cause the General Contractor to procure and maintain, at a minimum, for the duration of the General Construction Contract, insurance which is substantially equivalent to the insurance described in the attached Exhibit J against claims for injuries to persons or damages to property which may

arise from, or in connection with the performance of work thereunder by the General Contractor, and its agents, representatives, employees and/or subcontractors. The cost of such insurance shall be paid by the General Contractor or its subcontractors.

**(b) No Assumption of Risk.** By requiring such minimum insurance, neither Landlord nor Tenant shall be deemed to, or construed to, have assessed the risks that may be applicable to the General Contractor in the General Construction Contract. The General Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage.

**9.9 Construction of Project.** Landlord shall use its reasonable best efforts to commence initial construction of the Project following receipt of the clearing and grading permit and the foundation permit. Thereafter, following receipt of the building permit for the Project, Landlord shall cause construction of the Project to be diligently and continuously prosecuted. All work shall be performed in a good and workmanlike manner, shall be free of defects in the work and materials and shall be constructed in substantial accordance with the Contract Documents, the requirements of this Lease and Requirements of Law. The Landlord shall use its reasonable best efforts to cause Substantial Completion of the Project on or before the Developer Obligation Date.

**9.10 Payment of Project Costs and Other Costs Associated with the Project.** Throughout the course of construction of the Project, Developer shall submit to Landlord on a monthly basis, Project Applications for Payment in the manner, and with all supporting documentation, described in the Development Agreement. Pursuant to Section 9.2(a) above, Landlord shall require Developer to simultaneously provide Tenant with a copy of all such Project Applications for Payment and supporting documentation. Tenant shall have the right, but not the obligation, to give notice to Landlord objecting to any aspect of such submittals and Landlord shall notify Developer in the manner and within the time period set forth in the Development Agreement. If Tenant fails to give such notice so as to allow Landlord to make timely objection, Landlord shall be free to approve or to take such other action as it deems appropriate with respect to any such submittal. Any dispute with respect to Project Applications for Payment shall be subject to dispute resolution pursuant to Section 9.6 above.

**9.11 Savings.** Upon Final Acceptance of the Project, Landlord shall provide Tenant and Trustee a completion certificate in the form attached as Exhibit B to the Indenture and notice of the unexpended amount of the Tenant's Contingency (including any additions thereto resulting from unused amounts in the Tenant Improvement Allowance) and the unexpended amount of the Project Contingency. Landlord agrees that Tenant shall be entitled to \_\_\_\_% of the unexpended portion of the Tenant's Contingency and Landlord shall direct the Trustee to disburse Tenant's share of unexpended Tenant Contingency either: (a) to Tenant for payment of the cost of additional Tenant Improvements to the Project or payment of Additional Mitigation Costs to the extent requested by Tenant or (b) deposit such amounts in the Bond Fund. All unexpended portions of the Project Contingency remaining after payment of a portion of the Savings (as defined in the Development Agreement) to Developer as provided in Section 12(g) of the Development Agreement and funding of various holdbacks as provided in the completion certificate (including holdbacks for the design and/or construction of additional Tenant Improvements or Additional Mitigation as directed by Tenant), shall likewise be disbursed by Trustee in accordance with the completion certificate with any remaining funds deposited by the Trustee in the Bond Fund.

**9.12 As-Built Plans and Specifications; Manuals; Warranties; Permits and Licenses; and Survey.** On or before Final Acceptance of the Project, Landlord shall provide Tenant with a complete and detailed set of “as-built” plans and specifications for the Project (to be provided on CAD), together with copies of all other materials received from Developer pursuant to the Development Agreement including manuals, warranties, permits and licenses and an as-built survey.

**9.13 Enforcement of Warranties.** Landlord shall take all actions reasonably requested by Tenant to enforce or otherwise obtain the benefit of any warranty received from the Developer, the General Contractor or any other Contractors or any subcontractor thereof, or any supplier, materialman or manufacturer relating to the Project; provided, however, that Landlord shall incur no additional expense or liability in that connection. After expiration of any applicable warranty period, Tenant acknowledges that it shall be fully responsible for the cost of the maintenance and repair of the Premises pursuant to the terms of this Lease.

**9.14 Inspection by Tenant.** Tenant shall have the right to inspect the on-going construction of the Project and the Contract Documents upon reasonable prior notice to Landlord. In addition, Tenant shall have the right to have an independent consulting architect, engineer or other appropriate consultant inspect the Project and the Contract Documents. Landlord shall cause Developer to provide Tenant’s Construction Representative with all updates of the status of the construction of the Project issued to Landlord in accordance with the Development Agreement.

**9.15 Delays.** The Developer Obligation Date shall be extended to the extent of: (i) Unavoidable Delays; provided however that extensions due to Unavoidable Delays shall not exceed ninety (90) days; (ii) Owner-Caused Delays; and (iii) delays incurred as a result of the remediation of any Hazardous Substances in, on or emanating from the Land as of the Effective Date of this Lease, provided that Developer shall use reasonable efforts to minimize the impact on the Project Schedule due to such remediation. The existence of Unavoidable Delays of up to ninety (90) days shall excuse the General Contractor and Developer for resulting delays and changes in the Project Schedule, provided however that there shall not be any adjustment to the Fixed Price for additional costs resulting therefrom.

**(a)** Without the prior written consent of Tenant, Landlord shall not take any action or omit to take any action that would result in an Owner-Caused Delay.

**(b)** In the event that Substantial Completion of the Project does not occur on or prior to the Developer Obligation Date, Landlord shall require that Developer pay to Trustee on the first day of each month an amount equal to the Monthly Rent that would have been payable under this Lease had Substantial Completion of the Project occurred on the Developer Obligation Date, until the earlier of the Commencement Date or termination of this Lease pursuant to Section 9.16 of this Lease. To the extent Landlord (or the Trustee on behalf of the Landlord) receives insurance proceeds under the Builder’s Risk Insurance Policy described in Section 16(a)(v) of the Development Agreement to reimburse Landlord for loss of income and rents, such sums shall be paid to the Trustee and shall be credited against Developer’s obligation to pay an amount equal to such projected Monthly Rent to the Trustee. The amount equal to such projected Monthly Rent paid by Developer shall be prorated if a partial month elapses before Substantial Completion of the Project occurs. Upon Final Acceptance and the making of all Final

Payments (including the funding of the \_\_\_\_% holdback for uncompleted Punch List items and the holdback for LEED Certification), if there are funds remaining in the Project Fund (as defined in the Indenture) prior to the final distribution of said Fund (i.e., the sharing of contingency money), if Substantial Completion of the Project has failed to occur by the Developer Obligation Date, and if Developer has made the payments it is required to make pursuant to this Section 9.15 and Section 7(b) of the Development Agreement, the Developer and the Landlord, with written concurrence by the Tenant, shall determine and direct Trustee to pay to the Developer any additional interest earnings that accrued on the undisbursed Bond Proceeds Account as a direct result of such delay in excess of interest that would have accrued absent such delay.

**9.16 Termination of Lease.** Upon \_\_\_\_\_ ( ) days' prior written notice to Landlord and in the event that Substantial Completion of the Project has not occurred for any reason whatsoever including, but not limited to, Unavoidable Delays, by \_\_\_\_\_, 20\_\_, Landlord shall be in default under this Lease and Tenant shall have the right to terminate this Lease, without liability to Landlord, the Trustee, Bond Owners or any other party.

**9.17 No Amendment of Documents.** In the event Landlord desires to amend the Architect's Agreement, the Interior Design Contract, the General Construction Contract, any Contract Document, the Development Agreement, the Indenture, the Mortgage, or any other document, contract or agreement entered into in connection with the Project or the Bonds, Landlord shall submit a copy of such proposed amendment to Tenant and OST. In the event Tenant notifies Landlord within \_\_\_\_\_ ( ) business days following receipt of such proposed amendment of its objection to such proposed amendment, Landlord shall not enter into the proposed amendment unless Landlord first (i) responds to the concerns expressed by Tenant and (ii) any such amendment does not materially and adversely affect the Project.

## **10. Maintenance and Modification.**

**10.1 Maintenance and Repair.** Except as otherwise expressly provided herein including, without limitation, the provisions of subsection 10.2(f) and except for warranty claims for which Developer is responsible as provided in the Development Agreement and except for damage caused by the negligent acts or omissions of Landlord, from and after the Commencement Date of this Lease, Landlord shall, at Tenant's sole cost and expense, maintain the Premises and appurtenances and every part thereof in good order, condition and repair and will take all action and will perform all interior and exterior, structural and non-structural, foreseen and unforeseen, ordinary and extraordinary maintenance and repairs (excluding all necessary replacements, renewals, alterations, additions and any other work required following destruction or Condemnation of the Premises to the extent required under this Lease or as a condition of the continued use of the Premises or any work required by any order of any court or governmental agency which shall be performed by Landlord in accordance with the provisions of Sections 19 and 20 of this Lease) required to keep all parts of the Premises in good repair and condition, subject to ordinary wear and tear. Except as otherwise expressly provided herein and except for warranty claims which Landlord shall cause Developer to cure or remedy in accordance with the provisions of the Development Agreement, Landlord shall not be required to pay for the cost required to maintain all or any part of the Premises in good order, condition and repair.

## **10.2 Management of Premises; Accounting.**

**(a) Property Management.** Following Substantial Completion of the Project, Landlord shall at all times cause the Premises to be operated by a professional property management company selected by Landlord with the concurrence of Tenant with experience in managing commercial office buildings of comparable size and quality to the Premises under the terms of a property management agreement in form and substance satisfactory to Landlord and Tenant and at a management fee which shall not be in excess of the management fee charged by property management companies managing commercial office buildings of comparable size and quality in King County. The property management contract shall comply with Revenue Procedure 97-13 or any successor revenue procedure issued by the Internal Revenue Service governing management, operation or other service contracts in connection with the issuance of tax-exempt obligations. Upon signing each property management contract, Landlord shall provide Tenant with an opinion of nationally-recognized bond counsel to the effect that the terms of that contract complies with such revenue procedures and will not adversely affect the tax-exempt status of the Bonds. Such property manager shall at all times operate the Premises in compliance with all Requirements of Law and in compliance with the terms and provisions of this Lease and the Ground Lease. Tenant may, upon \_\_\_\_ (\_\_\_\_) days' written notice to Landlord (provided such notice may not be given until after the expiration of the Warranty Period), or under the circumstances described in Subsection 10.2(c) below, elect to operate the Premises itself or by a property manager of its choosing, provided that if Tenant elects to do so, Landlord shall have no further rights or obligations under Subsections 10.2(a), 10.2(c), 10.2(d), Section 10.3, and Section 10.1 as it relates to ordinary maintenance of the Premises shall be of no further force or effect.

**(b) Financial Statements.** As soon as reasonably possible and in any event within \_\_\_\_ (\_\_\_\_) days after the close of each fiscal year of Landlord, Landlord shall deliver to Tenant and Trustee the (i) consolidated balance sheet of Landlord and the Premises as at the end of such fiscal year setting forth in comparable form the corresponding figures as at the end of the preceding fiscal year, certified as to accuracy by an officer of Landlord; (ii) statements of income, retained earnings and changes in financial position for such fiscal year of Landlord and the Premises setting forth in comparable form the corresponding figures for the previous fiscal year prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year or containing disclosure of the effect on financial position or results of operations of any change in the application of accounting principles during the year certified as to accuracy by an officer of Landlord; (iii) operating statement for the Premises for the preceding calendar year certified as to accuracy by an officer of Landlord; and (iv) certificate executed by an officer of Landlord certifying compliance by Landlord with the requirements of this Lease, the Mortgage, the Indenture and the Bonds. Such year-end balance sheet and income statements of the Premises shall be accompanied by an unqualified report and opinion of independent public accountants of recognized standing selected by Landlord and not objected to by Tenant, which report and opinion shall be in accordance with generally accepted auditing standards relating to reporting, or, if qualified, the opinion shall not be qualified due to any departure from any generally accepted accounting principles, and shall be accompanied by a statement of such accountants that in making the audit necessary for the certification of such financial statements and any such report, such accountants have obtained no knowledge of any default under this Lease, the Mortgage, the Indenture, the Bonds or any other evidence of

indebtedness or of any event which, with notice or lapse of time, or both, would constitute an event of default under this Lease, the Mortgage, the Indenture, the Bonds or any other evidence of indebtedness or, if in the opinion of such accountants any such event of default or other event shall exist, shall include a statement as to the nature and status thereof.

**(c) Operating Budgets.** Landlord shall develop an annual operating budget for the Premises and shall submit a copy of such budget to Tenant no later than ninety (90) days prior to the commencement of each Fiscal Year for review and approval by Tenant for the purpose of determining the amount of estimated Operating Costs expected to be incurred in connection with the Premises for the upcoming Fiscal Year. If Tenant does not approve the proposed budget and Tenant and Landlord are unable to agree upon a budget by the 30<sup>th</sup> day prior to the commencement of the following Fiscal Year, Landlord may, at its option and by written notice, cause the Tenant to involuntarily elect to undertake responsibility for management of the Premises under Subsection 10.2(a) above, effective as of the date stated in Landlord's notice, but no earlier than \_\_\_\_\_ (\_\_\_) months after the date of such notice.

**(d) Capital Repairs Fund.** The annual operating budget for the Premises prepared by Landlord for submission to Tenant may include an amount, determined by Landlord, in consultation with Tenant and the property manager for the Premises, sufficient to fund a reserve for performance of anticipated capital repairs, replacements and improvements to the Premises during the term of the Lease. Such amount shall be transferred to the Capital Repairs Fund maintained by the Trustee under the terms of the Indenture. Amounts held in the Capital Repairs Fund shall be applied by Landlord at the direction of Tenant or as Tenant may otherwise direct in writing to the costs of any necessary capital repairs, replacements or improvements included in any annual or supplemental operating budget approved by Tenant. The balance of any such approved costs shall be paid by Tenant.

**(e) Issuer Administrative Fee.** From and after Substantial Completion of the Project, and as compensation for its services in overseeing the management of the Premises, the preparation of financial statements and the preparation of an operating budget for the Premises, Tenant shall pay Landlord an issuer administrative fee equal to the amount shown on Exhibit A. Such issuer administrative fee shall be included as part of the operating budget as an Operating Expense, and paid monthly at the same time and in the same manner that Additional Rent is paid.

**(f) Tenant Right to Assume Responsibility for Maintenance of Premises.** Upon written notice from Tenant to Landlord not less than \_\_\_\_\_ (\_\_\_) days prior to the commencement of any Fiscal Year, Tenant may elect to assume the responsibility for providing security or other services for the Premises. From the effective date of any such notice until Tenant issues not less than \_\_\_\_\_ (\_\_\_) days' notice revoking its assumption of responsibility for such security or other services, Tenant shall be solely responsible for the performance of and payment for such security or other services for the Premises, all of which shall no longer be deemed to be part of the Operating Costs.

**10.3 Tenant's Remedies.** Tenant shall provide Landlord written notice of any maintenance or repair required to the Premises or of any default by Landlord in the performance of its obligations under Section 10.1 of this Lease. Landlord shall have \_\_\_\_\_ (\_\_\_) days after receipt of notice from Tenant detailing the need for maintenance or repair, to commence to perform

its obligations under this Lease, except that Landlord shall perform its obligations as soon as reasonably possible if the nature of the problem presents a hazard or emergency. If Landlord does not perform its obligations under Section 10.1 of this Lease within the time limitations set forth in this Section 10.3, provided written notice has been given to Landlord as provided in this Section 10.3, Tenant shall have the right to withhold payment of the issuer administrative fee and shall have the right, but not the obligation, to perform such maintenance and repair and shall have the right to be reimbursed by Landlord for the sum it actually expends in the performance of such work. If Landlord does not reimburse Tenant within thirty (30) days after demand from Tenant, Tenant shall have the right to pursue any and all remedies available at law or equity except that Tenant shall have no right to offset against Monthly Rent payable under this Lease.

**10.4 Modifications, Alterations and Additions.** From and after the Commencement Date of this Lease, Tenant may, at Tenant's sole cost and expense, make modifications, alterations and additions to the Premises provided that such modifications, alterations and additions do not decrease the value of the Premises, and such modifications, alterations and additions shall be expeditiously completed in a good and workmanlike manner and in compliance with all applicable Laws and the requirements of all insurance policies required to be maintained by Tenant, without further consent from Landlord. Any modifications, alterations and additions made to the Premises by Tenant shall remain on and be surrendered with the Premises on expiration or termination of the Term.

**10.5 Tenant's Personal Property.** Tenant shall be responsible for providing such furniture, furnishings, equipment and other personal property that is not included as part of the Project at its sole cost and expense and shall have the right to sell, lease, finance, acquire, encumber, dispose, repair, replace, renovate, substitute, upgrade, enhance or improve Tenant's Personal Property at its discretion and from time to time without further notice to, or consent of, Landlord or the Trustee.

**11. Landlord Financing of Project.** Landlord agrees to use its best efforts to issue the Bonds. Landlord shall not have the right to mortgage, pledge, encumber or assign its rights in the Premises in whole or in part or to assign its rights under the Development Agreement, the Architect's Agreement, the Interior Design Contract, the General Construction Contract, any Contract Document, the Ground Lease, this Lease or any other document, contract or agreement entered into in connection with the Project or the Bonds without the prior written consent of the Tenant, except in connection with its financing of the Project through Bonds to be issued by Landlord pursuant to the Indenture and the Mortgage in compliance with the requirements of Revenue Ruling 63-20 and Revenue Procedure 82-26 issued by the Internal Revenue Service. Copies of the Indenture and the Mortgage securing the Bonds, together with collateral assignments of the Development Agreement and other Contract Documents and Uniform Commercial Code financing statements shall be provided to and shall be approved by Tenant which approval shall not be unreasonably withheld provided Tenant receives an opinion from nationally recognized bond counsel acceptable to Tenant that the interest on the Bonds secured by such Mortgage is exempt from taxation under the provisions of the Code and the financing proposed by the Indenture and the Mortgage is otherwise in full compliance with all requirements of the Code in connection with the issuance of tax-exempt obligations which satisfy the requirements of Revenue Ruling 63-20, Revenue Procedure 82-26 and other regulations, interpretations and letter rulings issued by the Internal Revenue Service with respect to such financings. Landlord shall cause the

Trustee to enter into a subordination, nondisturbance and attornment agreement in form and substance satisfactory to Tenant which shall, among other things, expressly provide that so long as Tenant is not in default under any of the terms, covenants or conditions of this Lease, the beneficiary under the Mortgage shall not disturb Tenant's possessory rights in the Premises in the event such beneficiary should foreclose the Mortgage. Landlord shall ensure that any official statement, offering circular or sales material relating to the Bonds includes language to the effect that (a) the Bonds are not a debt or a general obligation of the State of Washington or any agency or subdivision thereof, or the contracting of indebtedness by the State, or a pledge of the faith and credit or taxing power of the State, for purposes of any constitutional or statutory limitation upon debt or the contracting of indebtedness; and (b) the State's obligation to make payments under this Lease is subject to appropriation and to emergency reduction under certain circumstances, and that such obligation to make payments under this Lease does not constitute a debt obligation of the State of Washington or any agency or subdivision thereof, or the contracting of indebtedness by the State, or a pledge of the full faith and credit or taxing power of the State, for purposes of any constitutional or statutory limitation upon debt or the contracting of indebtedness.

Upon the issuance of the Bonds, Landlord shall provide Tenant and the OST with a certified transcript of proceedings of the Bonds, together with an opinion of nationally-recognized bond counsel, addressed to the State Finance Committee, to the effect that neither the Bonds nor the State's obligations to make payments under this Lease constitutes a debt obligation of the State of Washington or any agency or subdivision thereof, or the contracting of indebtedness by the State, or a pledge of the faith and credit or taxing power of the State, for purposes of any constitutional or statutory limitation upon debt or the contracting of indebtedness.

**12. Construction Liens.** From and after the Commencement Date of the Lease Tenant shall pay all costs for modifications, alterations and additions done by it or caused to be done by it on the Premises as permitted by this Lease (other than the construction of the Project) and Tenant shall keep the Premises free and clear of all construction liens resulting from modifications, alterations and additions done by or for Tenant; provided, however, Tenant shall have the right to contest the correctness or validity of any such Lien by appropriate proceedings conducted in good faith with due diligence. Within \_\_\_\_ (\_\_\_\_) days following written notice from Landlord, Tenant shall discharge said Lien of record or record a bond which complies with the requirements of RCW 60.04.161 eliminating said Lien as an encumbrance against the Premises if in the reasonable exercise of Landlord's judgment the protection of the Premises or Landlord's interest therein shall require such payment. In the event Tenant shall fail to so remove any such Lien, Landlord may take such action as Landlord shall reasonably determine to remove such Lien and all costs and expenses incurred by Landlord including, without limitation, amounts paid in good faith settlement of such Lien and attorneys' fees and costs shall be paid by Tenant to Landlord. Tenant's obligations pursuant to this Section 12 shall survive the Expiration Date of this Lease.

Tenant acknowledges that Landlord shall cause Developer to keep the Premises free and clear of all construction liens resulting from the initial construction of the Project (including the right to contest same by appropriate proceedings conducted in good faith with due diligence) under the terms of the Development Agreement prior to the Commencement Date of this Lease. If Developer shall fail to do so, Landlord shall protect, defend, indemnify and hold Tenant harmless against any such liens.



**13. Hold Harmless.** Landlord and Tenant mutually agree that in any and all causes of action and/or claims or third party claims arising out of or in connection with the terms, activities, use and/or operations of this Lease, including the Premises, each party shall be responsible to the other only to the extent of each other's comparative fault in causing the alleged damages or injuries.

As to any and all causes of action and/or claims or third-party claims arising from the sole fault of a party to this Lease, said party shall, to the extent permitted by law, have the duty to defend, save and hold the other party harmless and upon failure to do so, said party shall pay reasonable attorneys' fees, costs, and expenses incurred by the other party to this Lease in defense of said claims and/or actions.

Nothing contained within this Section 13 shall affect and/or alter the application of any other provision contained within this Lease.

**14. Minimum Scope of Insurance Coverage for Landlord.**

**14.1 Landlord's Coverages.** During the Term of this Lease, Landlord shall at a minimum maintain: commercial general liability insurance (Insurance Services Office form number (CGL 00 01 10 01 form or its equivalent)), covering commercial general liability including coverage for completed operations/product liability and contractual liability with a limit of not less than \$\_\_\_\_\_ combined single limit per occurrence; \$\_\_\_\_\_ general aggregate. In addition, Landlord shall maintain business automobile liability (owned, hired or non-owned vehicles) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability and workers' compensation coverage as required by the Industrial Insurance Act of the State of Washington, statutory limits.

**14.2 Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the Tenant. The deductible and/or self-insured retention of the policies shall not limit or apply to the Tenant and shall be the sole responsibility of the Landlord.

**14.3 Other Insurance Provisions** The insurance policies required by this Lease are also to contain or be endorsed to contain the following provisions where applicable:

**(a) Liability Policies:**

(1) The Trustee, and (with respect to Landlord's liability policy), the Tenant, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Landlord in connection with this Lease.

(2) To the extent of the Landlord's negligence, insurance coverage shall be primary insurance as respects the Tenant, its officers, officials, employees and agents and shall include a severability of interests (cross liability). Any insurance and/or self insurance maintained by Tenant, its officers, officials, employees and agents shall not contribute with the Landlord's insurance or benefit the Landlord in any way.

(3) Landlord's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

**(b) All Policies.** Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limits by claims paid, until after \_\_\_\_\_ ( ) days' prior written notice has been given to the Landlord, Tenant and Trustee (\_\_\_\_ ( ) days for nonpayment of premiums).

**(c) Acceptability of Insurers.** Unless otherwise approved by Tenant and Trustee:

(1) Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investors Service.

(2) If at any time any of the foregoing policies shall be or become unsatisfactory to Tenant, due to a change in form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Tenant, the Landlord shall, upon notice to that effect from Tenant promptly obtain a new policy and shall submit the same to Tenant and Trustee with certificates and endorsements, for approvals.

## **15. Minimum Scope of Insurance Coverage for Tenant.**

**15.1 General Liability; Self-Insurance.** From and after the Commencement Date, Tenant shall maintain, or cause to be maintained, in full force and effect, comprehensive general liability insurance covering the Premises in such amounts as may be established by Tenant from time to time but in any event not less than \$\_\_\_\_\_ per occurrence. Tenant may provide all or a portion of any insurance by self-insurance. Such insurance shall be applied toward extinguishment or satisfaction of Tenant's liability under Section 13 of this Lease. Such insurance may also be carried under a blanket policy with umbrella coverage. It is understood that this insurance covers any and all liability of Tenant and its officials, officers, employees and agents, and the procurement thereof does not constitute a waiver of the defense of governmental immunity. Such insurance (i) shall include coverage for any accident resulting in personal injury to or death of any person and consequential damages arising therefrom; (ii) shall include comprehensive property damage insurance; (iii) shall, unless Tenant self-insures, be issued by a financially responsible insurance company authorized to do business in the State of Washington and approved by OFM; (iv) shall name Landlord and Trustee as an additional insureds thereunder; (v) shall provide that the same may not be cancelled or given notice of non-renewal nor shall the terms of conditions thereof be altered, amended or modified without at least \_\_\_\_\_ ( ) days prior written notice being given by the insurer to Trustee (ten (10) days for nonpayment of premiums); and (vi) shall include contractual liability coverage. Tenant shall furnish to Trustee on or before the Commencement Date and on or before the effective date of any such policy certificates of insurance or self-insurance evidencing that the same shall be in full force and effect on said effective date and that the premiums therefor have been paid.

**15.2 Workers' Compensation.** Tenant is self-insured for all of its workers' compensation liability exposure. Tenant agrees, at its own expense, to maintain through its self-insurance program coverage for its workers' compensation liability exposure for the duration of the Term of this Lease. Following the Commencement Date, Tenant agrees to provide Landlord and Trustee with at least \_\_\_\_\_ ( ) days' prior written notice of any change in the Tenant's self-insured status and will provide Landlord and Trustee with a certificate of self-insurance as adequate proof of insurance.

**16. Property Insurance.** Following the Commencement Date, Tenant will carry or cause to be carried fire and extended coverage property insurance covering the Premises and all of Tenant's personal property in such amounts and covering such risks as Tenant may determine from time to time. Such insurance shall be carried with financially responsible insurance companies authorized to do business in the State of Washington and approved by OFM, and may be carried under a policy or policies covering other property owned or controlled by the State or may be accomplished through a program of self-insurance as provided for similarly situated facilities of the State. Tenant shall furnish to Trustee and Landlord, on or before the effective date of any such policy, certificates of insurance or self-insurance evidencing that the insurance required by this Section 16 is in force and effect on the specified date and that the premiums therefor have been paid. Tenant agrees that such policies shall contain a provision that the same may not be cancelled or given notice of non-renewal nor shall the terms of conditions thereof be altered, amended or modified without at least \_\_\_\_\_ ( ) days' prior written notice being given by the insurer to Trustee (ten (10) days for nonpayment of premiums).

**17. Waiver of Subrogation.** Landlord and Tenant agree that they shall not make a claim against or seek recovery from the other party for any loss or damage to their property, or the property of others resulting from the perils for which property insurance coverage is provided, or required to be provided hereunder (or would have been provided had Tenant not elected to self-insure) and each hereby releases the other from any such claim or liability regardless of the cause of such loss or damage. Such waiver is conditioned upon the parties' ability to enter into such a waiver and is valid only to the extent allowed by their respective insurers.

**18. Other Insurance Matters.**

**18.1 Insurance Requirements.**

*(a)* At all times specified herein, Landlord and Tenant agree to procure and maintain in full force and effect for the duration of the Term of this Lease insurance or self-insurance as required by Section 14, Section 15 and Section 16 above.

*(b)* Unless otherwise approved by Landlord and Tenant, each insurance policy shall be written on an "occurrence" form.

*(c)* By requiring such minimum insurance as specified herein, neither party shall be deemed to, or construed to, have assessed the risks that may be applicable to the other party to this Lease. Each party shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage.

(d) Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

(e) Each party shall furnish the other party with certificates of insurance and endorsements as required by this Lease. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for Landlord's insurance are to be on forms approved by Tenant and are to be received and approved by Tenant and Trustee prior to the Effective Date of this Lease. The certificate and endorsements for Tenant's insurance are to be received and approved by Landlord and Trustee prior to the Commencement Date of this Lease. Tenant and Trustee each reserves the right to require complete certified copies of all required policies at any time.

**18.2 Insurance Prior to the Commencement Date of this Lease.** Prior to the Commencement Date of this Lease, Landlord and Tenant acknowledge, understand and agree that all liability and property insurance necessary in connection with the Premises (except for Tenant's comprehensive general liability insurance described in Section 15.1 of this Lease which can be self-insured by Tenant pursuant to Section 15.1 of this Lease and shall be provided by Tenant from and after the Commencement Date) shall be obtained and thereafter maintained in full force and effect by Landlord, Contractors and Developer in accordance with the provisions of the Development Agreement; provided, however, that no property insurance on the buildings existing on the Land as of the Effective Date is required for the time period between the Effective Date and Bond Closing since the existing buildings will be demolished as part of the Project. Such insurance shall name Landlord, Tenant and Trustee as their respective interests may appear, shall name the Trustee and Tenant as additional insureds on all liability policies and shall name the Trustee as loss payee, where appropriate, and shall be in form satisfactory to Tenant.

**19. Destruction.** In the event the Premises are damaged or destroyed by fire or other casualty, this Lease shall not terminate nor shall there be any abatement of the Rent, if any, otherwise payable by Tenant hereunder. In the event the Premises are damaged or destroyed by fire or other casualty prior to the Commencement Date of this Lease, the risk of loss is on the Developer and Developer is solely responsible for repair and restoration of the Premises under the Development Agreement. If such damage or destruction occurs after the Commencement Date of this Lease, then within 180 days following such damage or destruction, Tenant shall notify Landlord and Trustee of its election to either prepay the Monthly Rent or to rebuild the Premises. In the event Tenant elects to prepay the Monthly Rent, Tenant shall pay Trustee such portion of the insurance proceeds as is necessary to prepay the Bonds then outstanding in accordance with the special mandatory redemption provisions set forth in the Indenture. The balance of the insurance proceeds shall be retained by Tenant. In the event Tenant elects to rebuild the Premises, there shall be no abatement of Rent otherwise payable by Tenant hereunder. Tenant shall use such portion of the insurance proceeds as may be necessary to repair, rebuild or restore all or any portion of the Premises that may have been damaged or destroyed as nearly as practicable in full compliance with all legal requirements and to the same condition, character and at least equal value and utility to that existing prior to such damage or destruction. If the insurance proceeds are insufficient to pay in full the cost of any repair, restoration, modification, or improvement of any

component of the Premises, Tenant may, subject to appropriation of sufficient funds, complete the work and pay any costs in excess of the amount of the insurance proceeds. Tenant shall not be entitled to any reimbursement therefor from Landlord or Trustee nor shall Tenant be entitled to any diminution of any Rent otherwise payable hereunder.

## **20. Eminent Domain Proceedings or Loss of Title.**

**20.1 Applicable Provisions.** The following provisions shall apply with respect to eminent domain proceedings or loss of title affecting the Premises:

*(a) Total Taking.* If all of the Premises are taken by eminent domain or there is a total loss of title to the Premises which is insured under a policy or policies of title insurance, this Lease shall terminate as of the date when the condemning entity or third party has the right to possession of the Premises.

*(b) Partial Taking or Loss of Title.* If a taking of any part of the Premises by eminent domain or loss of title to any part of the Premises renders the Premises unsuitable, in the judgment of Tenant, for the construction of the Project, or following construction of the Project the use and occupancy of the Premises, this Lease may, at the option of Tenant, be terminated as of the date when the condemning entity or other person has the right to possession of the portion of the Premises so taken or lost, by written notice given to Landlord and Trustee not more than \_\_\_\_\_ (\_\_\_\_) days after Tenant receives notice of the taking or loss.

*(c) Awards.* In any proceeding whereby all or part of the Premises are taken by eminent domain or there is a loss of title to all or part of the Premises, whether or not the Tenant elects to terminate this Lease, all of the condemnation award or payments received from the title insurance companies which insured title to the Premises shall be paid to the Tenant who shall, after deducting all costs and expenses incurred by the Tenant in connection with the negotiation, adjustment and collection of the award or payment, apply the award or payment as follows:

(i) In the event there is a complete failure of title to the Premises or all of the Premises are taken by eminent domain, or in the event of a partial loss of title or taking wherein Tenant has elected to terminate this Lease, Tenant shall pay Trustee such portion of the condemnation award or awards or title insurance payment or payments as is necessary to prepay the Bonds then outstanding in accordance with the special mandatory redemption provisions set forth in the Indenture. The balance of the award or awards or title insurance payment or payments, if any, shall be retained by Tenant. This provision shall survive termination of the Lease as a result of any such eminent domain proceeding or loss of title.

(ii) In the event of a partial loss of title or taking wherein Tenant has not elected to terminate this Lease, the award or awards of title insurance payments or condemnation awards shall be retained by Tenant.

**20.2 Continuance of the Lease Following Less Than Substantial Condemnation or Loss of Title to the Premises.** If there is a partial taking of the Premises by eminent domain or a partial loss of title to the Premises and Tenant elects not to terminate this Lease, this Lease shall not terminate as to the remainder of the Premises and there shall be no

abatement of Rent otherwise payable by Tenant hereunder and Tenant shall proceed immediately and with due diligence, using such portion of the condemnation award or awards or title insurance payment or payments as may be necessary to repair, rebuild or restore all or any portion of the Premises that may have been taken as nearly as practicable (i) in full compliance with all legal requirements and (ii) to the same condition, character and at least equal value and utility to that existing prior to such condemnation or loss.

**20.3 Insufficiency of Condemnation Award or Title Insurance Payments.** If the condemnation award or title insurance payment is insufficient to pay in full the cost of any repair, restoration, modification or improvement of any component of the Premises, Tenant may, subject to appropriation of sufficient funds, complete the work and pay any cost in excess of the amount of the condemnation award or title insurance payment. Tenant shall not be entitled to any reimbursement therefor from Landlord or Trustee nor shall Tenant be entitled to any diminution of any Rent otherwise payable hereunder.

**20.4 Temporary Taking.** If the temporary use of all or any part of the Premises or the appurtenances thereto shall be taken, the term of this Lease shall not be affected in any way and Tenant shall continue to pay in full the Rent and other sums or sums of money herein provided to be paid by Tenant, and the entire award for such taking shall be paid to and retained by Tenant.

**20.5 Personal Property and Moving Expenses.** Any award or part of an award specifically paid as compensation for the taking of personal property, furniture or equipment owned by Tenant or any subtenant of Tenant or for the moving expenses of Tenant or any subtenant of Tenant, shall be payable to Tenant, or such subtenant, as the case may be.

**20.6 Cooperation of Landlord.** Landlord shall cooperate fully with Tenant at the expense of Tenant in filing any proof of loss with respect to any insurance policy covering the events described herein and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Premises or any part thereof and, to the extent it may lawfully do so, authorizes Tenant to litigate in any proceeding resulting therefrom in the name of and on behalf of Landlord. Without restricting Trustee's rights under the Mortgage, in no event will Landlord voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Premises or any part thereof without the written consent of Tenant.

**21. Assignment of Project; Subletting.** Landlord shall not assign its interest in the Ground Lease, this Lease or in the Premises (except to Trustee) without the prior written consent of Tenant and Trustee and a written opinion from nationally recognized bond counsel that any such transfer, conveyance or assignment by Landlord of all or any portion of its interest in the Lease or the Premises will not have an adverse effect on the tax exempt status of interest payable on the Bonds and any attempted assignment in violation of the consent requirements under this Section 21 shall be null and void and shall constitute an event of default under the Indenture. Tenant shall not assign or encumber its interest in this Lease or in the Premises without the prior written consent of Landlord and Trustee together with an opinion of nationally recognized bond counsel that any such assignment will not adversely affect the tax exempt status of interest payable on the Bonds. Tenant may sublease the Premises or any portion thereof, to the extent and on the terms and conditions set forth under Section 7 of the Lease and so long as the execution of such

sublease would not violate the provisions of Section 7 hereof; provided, however, that under no circumstances shall Tenant be released or relieved from any of its obligations hereunder. Any such assignment or sublease as provided for in this Section shall be in writing and shall require such assignee or subtenant to comply fully with the terms of this Lease, including, without limitation, the provisions of Section 7 regarding use of the Premises. Tenant shall provide Landlord and Trustee with written notice of any such assignment or sublease and a copy of any such assignment or sublease documentation.

**22. Default by Tenant.** The occurrence of any of the following shall constitute an Event of Default by Tenant under this Lease:

**22.1 Payment.** Failure (a) to make any Monthly Rent payments due under this Lease if the failure to pay is not cured within \_\_\_\_\_ (\_\_) days after written notice of such failure has been given by Trustee or Landlord to Tenant, or (b) failure to make any other payment required if the failure to pay is not cured within \_\_\_\_\_ (\_\_) days after written notice of such failure has been given by Landlord to Tenant.

**22.2 Other Failure to Perform.** Failure to perform any other provision of this Lease if the failure to perform is not cured within \_\_\_\_\_ (\_\_) days after written notice of such default has been given by Landlord to Tenant. If the default cannot reasonably be cured within \_\_\_\_\_ (\_\_) days, then Tenant shall not be in default under this Lease if Tenant commences to cure the default within \_\_\_\_\_ (\_\_) days and diligently and in good faith continues to cure the default; provided, however, that if such default is of a nature such that it cannot be cured within \_\_\_\_\_ (\_\_) days, Tenant shall obtain the written approval of Landlord and the Trustee to continue its efforts to cure such default following the \_\_\_\_\_ (\_\_) day cure period. A Permitted Termination Event shall not constitute an Event of Default.

**23. Late Charges; Interest on Past Due Monthly Rent.** Tenant acknowledges that a late payment of Monthly Rent hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is difficult to ascertain. Therefore, in the event Tenant shall fail to pay any installment of Monthly Rent due hereunder for \_\_\_\_\_ (\_\_) days after the date such amount is due, Tenant shall also pay Trustee a late charge equal to \_\_\_\_ percent (\_\_\_%) of the amount then owing and past due together with interest on such past due amount at an interest rate of \_\_\_\_\_ percent per annum (\_\_\_%) commencing \_\_\_\_\_ (\_\_) days after the date such amount is due until paid. Payment of such late charges and/or default interest shall not excuse or cure any default by Tenant under this Lease.

**24. Remedies for Tenant Default.** If Tenant commits a default and fails to cure such default within the applicable time period provided under Section 22 hereof, then Landlord, by providing Tenant with ten (10) days advance written notice, shall have the following remedies:

**24.1 Termination.** Solely with respect to any default by Tenant pursuant to Section 22.1, Landlord may cancel and terminate this Lease, evict the Tenant and re-enter the Premises, but notwithstanding such re-entry by Landlord, Tenant covenants and agrees to make good to Landlord any deficiency arising from a re-entry and reletting of the Premises at a lesser Monthly Rent than the Monthly Rent agreed to through the Term of this Lease, provided Landlord has taken all reasonable measures to ensure that a maximum rental rate was obtained for reletting.

Landlord shall provide notice to Tenant of any amount by which rentals from such reletting are less than the Monthly Rent and the due dates of such Monthly Rent. The deficiency amount for each such Monthly Rent payment shall be paid by Tenant on or before the due date for such Monthly Rent payment.

**24.2 Other Remedies.** With respect to any default by Tenant pursuant to Section 22, Landlord shall have all rights and remedies provided under applicable law; provided, however, that in no event shall Landlord have the right to accelerate any Rent payments owing by Tenant under this Lease.

**25. Signs.** Tenant shall have the right to place identification signage, other signage, advertisements, awnings, banners or other exterior decorations on the exterior of the Premises without any further consent or approval from Landlord. Any sign that Tenant has the right to place, construct and maintain shall comply with all Laws, and Tenant shall obtain any approval required by such Laws. Landlord makes no representation with respect to Tenant's ability to obtain such approval.

**26. Landlord's Right to Enter the Premises.** Landlord, its agents, assigns, employees, workmen or any person entitled to inspect the Premises under the Mortgage shall have the right to enter the Premises at reasonable times during Tenant's normal business hours for the below listed purposes; provided, however, Landlord acknowledges and agrees to comply with Tenant's requests regarding security. Landlord shall conduct its activities on the Premises as allowed in this Section in a manner that will cause the least possible inconvenience, annoyance or disturbance to Tenant. Landlord shall not be liable in any manner for any inconvenience, annoyance, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises as provided in this Section, except damage resulting from the negligent acts or omissions of Landlord. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any right reserved in this Section:

**26.1 Condition.** To determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease and to perform any required obligations under the Lease.

**26.2 Notices.** To serve, post or keep posted any notices required or allowed under the provisions of this Lease.

**27. No Encumbrances by Landlord.** Except to the extent expressly authorized in Sections 11 and 21 of this Lease Landlord shall not at any time during the Term of this Lease sell, transfer, lease (other than to Tenant pursuant to this Lease), convey, encumber (other than to Trustee pursuant to the Mortgage), pledge (other than to Trustee pursuant to the Indenture), hypothecate or otherwise grant a security interest in the Premises or any portion thereof.

**28. Right to Estoppel Certificates.** Each party, within \_\_\_\_ (\_\_\_\_) days after notice from the other party, shall execute and deliver to the other party, in recordable form, a certificate stating (a) that this Lease is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications; (b) the date to which Rent has been paid; (c) whether or not there is any existing default by Tenant in the payment of any Rent or any other sum of money



hereunder, and whether or not there is any other existing default by either party hereto with respect to which a notice of default has been served, and if there is any such default, specifying the nature and extent thereof; and (d) whether or not there are any setoffs, defenses or counterclaims against enforcement of the obligations to be performed hereunder existing in favor of the party requesting such certificate. Failure to deliver the certificate within such \_\_\_\_\_ (\_\_\_\_) day period shall be conclusive upon the party failing to deliver the certificate for the benefit of the party requesting the certificate and any successor to the party requesting the certificate, that this Lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate.

**29. Limitation on Landlord's Liability.** Notwithstanding any provision in the Lease to the contrary, Tenant agrees that it shall look solely to the estate and property of Landlord in the Premises, any insurance proceeds or condemnation proceeds payable to the Landlord under this Lease, and any sums paid to Landlord under the Development Agreement for the collection of any judgment requiring the payment of money by Landlord or for the enforcement of any other judgment or remedy against Landlord and no other assets of Landlord shall be subject to levy, execution or other procedure for the satisfaction of Tenant's remedies.

**30. Attorneys' Fees.** In the event either party requires the services of an attorney in connection with enforcing the terms of this Lease, or in the event suit is brought for the recovery of any Rent due under this Lease or for the breach of any covenant or condition of this Lease, or for the restitution of said Premises to Landlord and/or eviction of Tenant during said Term or after the expiration thereof, the prevailing party will be entitled to a reasonable sum for attorneys' fees, witness fees, and court costs, including costs of appeal.

**31. Options to Prepay Lease and Purchase Premises; Surrender.**

**31.1 Option to Purchase.** Provided that Tenant is not in default under this Lease, Tenant shall have the option to purchase the Premises and thereby terminate this Lease at any time permitted by the Indenture. The purchase price of the Premises shall be an amount calculated pursuant to Section 6.01 of the Indenture.

**31.2 Exercise of Option.** Tenant shall give Landlord and Trustee not less than \_\_\_\_\_ (\_\_\_\_) days' prior written notice of its irrevocable election to exercise its option to purchase under Section 31.1 hereof in the form set forth in Exhibit H attached hereto. The purchase price and any Additional Rent then due and owing shall be paid in cash or same-day available funds by 10:00 a.m. Seattle time on the payment date specified in such notice (or such other date as Tenant, Trustee and Landlord may mutually agree).

**31.3 Conveyance of Premises.** On the payment date specified in the notice of election to exercise the purchase option, or such other date as Tenant, Trustee and Landlord may mutually agree, Landlord shall convey the Premises to the State by statutory warranty deed modified to convey all of Landlord's leasehold interest in the Land and its fee ownership interest in all improvements thereon constructed by Landlord, and this Lease shall terminate. Said deed may list as exceptions all covenants, conditions and restrictions then recorded against the Premises so long as such exceptions: (i) are set forth in Exhibit G attached hereto; (ii) consist of non-delinquent real estate taxes and assessments, or (iii) arise by reason of Tenant's activities. Tenant

shall be responsible for the cost for any owner's policy of title insurance the State elects to obtain in connection with such purchase. Landlord shall not be required to make any representations regarding the conditions of the Premises and the State agrees to accept the Premises in an "as is" condition; provided, however, that nothing contained in this Section 31.3 shall constitute a waiver of Landlord's obligation to maintain the Premises in good condition and repair as provided elsewhere in this Lease. Nothing herein shall be construed to require Tenant to exercise the purchase option herein granted.

**31.4 Surrender.** Landlord shall, on the Expiration Date, surrender and deliver up the Premises, including all improvements then located thereon and the appurtenances thereto, into the possession of the State, in good order, condition and repair, free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances other than those existing on the date of this Lease and those, if any, created by Tenant, without any payment or allowance whatsoever by the State. Landlord shall execute, acknowledge and deliver to the State such instruments of further assurance as in the opinion of the State are necessary or desirable to confirm or perfect the State's right, title and interest in and to all of the above-described property. The provisions of this Section shall survive the expiration or termination of this Lease.

**32. No Brokers.** Landlord and Tenant each represent to the other that neither is represented by any broker, agent or finder with respect to this Lease in any manner. Each party agrees, to the extent permitted by law, to indemnify and hold the other party harmless from and against any and all liability, costs, damages, causes of action or other proceedings instituted by any other broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in any manner whatsoever in connection with this Lease, which indemnification shall survive the expiration or termination of this Lease.

### **33. Miscellaneous Provisions.**

**33.1 Entire Agreement.** This Lease, including Exhibits A-J which are attached hereto and by this reference incorporated herein, sets forth the entire agreement of the parties as to the subject matter hereof and supersedes all prior discussions and understandings between them. This Lease may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized officer or representative of each party hereto.

**33.2 Governing Law.** This Lease shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

**33.3 Severability.** Should any of the provisions of this Lease be found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Lease shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the parties.

**33.4 Jurisdiction.** In the event any action is brought to enforce any of the provisions of this Lease, the parties agree to be subject to exclusive in personam jurisdiction in the Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.

**33.5 Waiver.** No waiver of any right under this Lease shall be effective unless contained in writing signed by a duly authorized officer or representative of the party sought to be charged with the waiver and no waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future right or of any other right arising under this Lease.

**33.6 Captions.** Section captions contained in this Lease are included for convenience only and form no part of the agreement between the parties.

**33.7 Notices.** All notices or requests required or permitted under this Lease shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, by nationally recognized overnight courier or by facsimile transmission and shall be deemed given when so delivered or, if mailed, on the third (3<sup>rd</sup>) business day after the same is deposited in the United States Mail with postage charges prepaid, or on the date received or faxed (provided the fax machine has issued a printed confirmation of receipt). All notices or requests to any party shall be sent to all other parties as follows:

If to Landlord:

If to Tenant:                      State of Washington  
Department of Social and Health Services

With a copy to:                      State of Washington  
\_\_\_\_\_

If to Trustee:

And a copy to  
OST at:                      State of Washington  
Office of the State Treasurer  
P.O. Box 40200  
Olympia, Washington 98504-0200  
Attention:                      Deputy Treasurer-Debt Management

Any party may change the address to which notices shall be sent by notice to the other party in the manner and with the effect set forth in this Section 33.7.

**33.8 Binding Effect.** Subject to the provisions of Sections 11 and 21 hereof, this Lease shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. No permitted assignment of this Lease or Tenant's rights hereunder shall be effective against Landlord unless and until an executed counterpart of the instrument of assignment shall have been delivered to Landlord and Landlord shall have been furnished with the name and address of the assignee or successor. The term "Tenant" shall be deemed to include the assignee under any such permitted assignment. The term "Landlord" shall include any successors

to or assigns of the Landlord's interest in the Premises following any foreclosure of the Mortgage, including Trustee or any purchaser at a trustee's or sheriff's sale of the Premises.

**33.9 Gender and Number.** As used in this Lease, the masculine shall include the feminine and neuter, the feminine shall include the masculine and neuter, the neuter shall include the masculine and feminine, the singular shall include the plural and the plural shall include the singular, as the context may require.

**33.10 Nondiscrimination.** Landlord and Tenant each agree it will not discriminate in employment at the Premises on the basis of race, color, religion, sex, national origin, veteran status, sexual orientation or physical and mental disability in regard to any position for which the prospective employee is qualified, nor will Landlord or Tenant maintain facilities which are segregated on the basis of race, color, religion, sex or national origin at the Premises.

**33.11 Recording; Memorandum of Lease.** Neither Landlord nor Tenant shall record this Lease without the written consent of the other; provided, however, that either Landlord or Tenant shall have the right to record a Memorandum of this Lease in the form attached hereto as Exhibit E and by this reference incorporated herein upon the Effective Date.

**33.12 Time Is of the Essence.** Time is of the essence in the performance of each party's obligations under this Lease. Each party will carry out its obligations under this Lease diligently and in good faith.

**33.13 Nature of Relationship.** The relationship between the Landlord and Tenant under this Lease shall be solely that of landlord and tenant of real property. It is not intended by this Lease to, and nothing contained in this Lease shall, create any partnership, joint venture or other arrangement between Landlord and Tenant. No term or provision of this Lease is intended to be, or shall be, for the benefit of any other person, firm, organization or corporation, nor shall any other person, firm, organization or corporation have any right or cause of action hereunder.

**33.14 Fair Construction.** The provisions of this Lease shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Lease. Each party hereto and its counsel has reviewed and revised this Lease and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Lease. Each agreement, term and provision of this Lease to be performed by Landlord or Tenant shall be construed to be both a covenant and a condition.

**33.15 Amendments or Modifications of this Lease.** Subject to the limitations and conditions set forth in the Indenture, Landlord and Tenant may execute such amendments or modifications to this Lease, including any change in the legal description of Land, the granting of any easement or vacation of roads, streets or alleys as they may deem necessary or desirable from time to time and at any time without the consent of the owners of the Bonds or the Trustee. Landlord and Tenant agree to negotiate in good faith any amendment to this Lease that may be requested or required in connection with the issuance of the Bonds.

**33.16 Counterparts.** This Lease may be executed in counterparts, each of which constitutes an original and all of which constitute but one original.

**34. Prevailing Wage.** Landlord agrees and covenants with Tenant that the Development Agreement shall obligate Developer to require Contractors and subcontractors of such Contractors in connection with such contracts as may be let regarding the construction of the Project to pay the prevailing wage to the workmen, laborers and mechanics as may then be determined by the Washington State Department of Labor and Industries for the particular craft in the particular geographic area.

**35. Authority.** Landlord is a Washington non-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Washington. Tenant is the State of Washington acting through the Department of \_\_\_\_\_. By execution of this Lease, Landlord and Tenant represent that they have authority to enter into this Lease.

**36. Sources of Funds for Obligations Hereunder.**

**36.1 Tenant Subleases to Other State Agencies.** Tenant intends to execute subleases of the Premises with state agency tenants, and those subleases will provide for payment by the sub-tenants of their sub-rent from current appropriations of all amounts anticipated to be due and owing as sub-rent under such sublease(s) during the then current Biennium.

**36.2 Pledge to Budget and Seek Appropriations for Rent.** Tenant pledges:

*(a)* to include in its biennial budgets required by law to be submitted to OFM all Rent required by this Lease taking into account appropriations included in budgets submitted by State agency subtenants;

*(b)* to submit budgets timely to OFM in accordance with applicable law;

*(c)* to use its best efforts to obtain appropriations by the State Legislature in amounts sufficient to pay all Rent required by this Lease taking into account appropriations included in budgets submitted by State agency subtenants;

*(d)* to include all Rent in its statements of proposed expenditures for each fiscal period required by law to be submitted to OFM; and

*(e)* to use its best efforts to obtain allotments by OFM of appropriated funds sufficient to pay all Rent.

In addition, if and to the extent that all or portions of the Project are sublet by Tenant to other state agencies, Tenant will work with each sub-tenant to ensure that the sub-tenant(s) also comply with the obligations set forth in the previous sentence. To the extent that Rent is paid by sub-tenants, the Tenant shall not be obligated to seek and obtain appropriations to pay Rent.

If Tenant anticipates that such appropriations will not be available during any Biennium, the Tenant shall notify the Trustee immediately.

**36.3 Source of Funds to Pay Rent.** Tenant's obligation to pay Rent is payable solely from funds, if any, appropriated by the State Legislature. Neither the full faith and credit nor the taxing power of the State of Washington is pledged to payment of Rent. The Tenant's obligation to pay Rent is subject to appropriation by the State Legislature and to Executive Order reduction by the Governor. The obligations of the Tenant under this Lease, including the obligation to pay Rent, is not a debt of the State within the meaning of Article VIII of the State Constitution.

**36.4 Lease Nonterminable.** Except as provided in Section 9.16, Section 20.1(a) and (b), Section 39, and except upon the occurrence of a Permitted Termination Event and the exercise of the rights granted in Section 37 hereof, this Lease shall not terminate, nor shall the State have any right to terminate this Lease or to be released or discharged from any obligations or liabilities hereunder for any reason, including, without limitation, damage or destruction of the Premises, it being the intention of the parties hereto that all Rent payable by the Tenant hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

**37. Permitted Termination Event; Termination and Return of Premises.** Each of the following constitutes a "Permitted Termination Event":

(a) the State Legislature elects not to appropriate sufficient funds within any biennial budget for the purpose of paying Rent due under this Lease during the next occurring biennium; or

(b) the governor of the State issues an Executive Order mandating an emergency reduction in State funding below levels sufficient to pay Rent due under this Lease during the next occurring biennium.

If the State Legislature has elected not to appropriate sufficient funds, or if an Executive Order has reduced funding below the level sufficient to pay Rent under this Lease in the next occurring biennium, the Tenant shall deliver written notice to the Trustee and Landlord within five (5) Business Days after the enactment of such biennial budget or Executive Order, which notice must describe the Permitted Termination Event and state the Permitted Termination Date.

Within \_\_\_\_ days following delivery of notice of a Permitted Termination Event caused by the State Legislature electing not to appropriate sufficient funds as described above, if practicable, the Tenant shall request a supplemental appropriation sufficient to pay Rent due under this Lease during the next occurring biennium. Within \_\_\_\_ days following delivery of notice of a Permitted Termination Event caused by an Executive Order reduction, the Tenant shall request that the Executive Order be withdrawn.

Upon the occurrence of a Permitted Termination Event, Tenant shall vacate the Premises and deliver possession and control thereof to the Landlord on the Permitted Termination Date. This Lease shall terminate and Tenant shall thereupon be released of all of its obligations under this Lease, including its obligations to make all further Rent payments hereunder with respect to the Premises. If Tenant returns possession of the Premises to Landlord pursuant to the terms of this Section, the Trustee shall be entitled to retain all sums theretofore transmitted to the Trustee

by or on behalf of the Tenant (other than amounts then on deposit in the Capital Repairs Fund which shall be paid to Tenant).

The occurrence of a Permitted Termination Event does not constitute an Event of Default under this Lease and the remedies described above relating to the surrender of possession of the Premises are the sole remedies available to Landlord upon such occurrence. If the State Legislature provides a supplemental appropriation or the Executive Order is withdrawn prior to the date on which the Premises have been vacated and the Premises have not yet been re-let or otherwise disposed of, the Tenant may, by written notice to Landlord and the Trustee, revoke the notice of the Permitted Termination Event and the Permitted Termination Date, resume possession of the Premises and have all of the rights, duties and obligations of the Tenant under this Lease.

### **38. Tax Covenants.**

**38.1 Protection of Tax Exemption.** Tenant covenants that (i) it will take, or require to be taken, all actions that may be required of Tenant for the interest payments under the Bonds to be and remain excluded from gross income for federal income tax purposes and from treatment as an item of tax preference for minimum tax imposed on individuals and corporations under the Code; (ii) it will not take or authorize to be taken any actions that would adversely affect the exclusion of interest on the Bonds under the Code; and (iii) it or persons acting for it, among other acts of compliance, will (1) apply the proceeds of the Bonds to the governmental purposes of the borrowing; (2) restrict the yield on investment property; and (3) refrain from certain uses of those proceeds and, as applicable, of the Project financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of said interest under the Code.

**38.2 Use of Proceeds.** Tenant covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (i) the Bonds will not (1) constitute private activity bonds, arbitrage bonds or hedge bonds under Section 141, 148 or 149 of the Code, or (2) be treated other than as bonds to which Section 103(a) of the Code applies, and (ii) the interest on the Bonds will not be treated as a preference item under Section 57 of the Code.

**38.3 Bonds Not “Bank Eligible”.** The Bonds shall not be “qualified tax-exempt obligations” for purchase by financial institutions pursuant to Section 265(b) of the Code.

**38.4 Change in Use.** No changes will be made in the use of the Project financed with the proceeds of the Bonds so as to impair the exclusion from gross income for federal income tax purposes of the interest paid under the Bonds.

**38.5 Modification.** This Section 38 may be modified upon receipt of an opinion of nationally recognized bond counsel to the extent necessary to ensure that this Lease or the Bonds are not classified as “private activity bonds” as defined in Section 141 of the Code.

All covenants of Tenant contained herein or in any tax compliance certificate or other instrument delivered by Tenant in connection with the execution and delivery of the Bonds, shall survive the execution and delivery hereof and the execution, sale and delivery of the Bonds as representations of facts existing as of the date of execution and delivery of the instrument containing such representation.

**39. Termination of Lease.** This Lease shall automatically terminate upon \_\_\_\_\_, 20\_\_ without further action by either party if the Bonds have not been issued on or before \_\_\_\_\_, 20\_\_, without any liability to Tenant. Landlord and Tenant acknowledge and agree that Landlord's obligations under Section 9 of this Lease are contingent upon issuance of the Bonds and Bond Closing. Landlord grants Tenant the right, at no cost, to enter upon and use the Land until Bond Closing for State purposes, including without limitation, pre-development work related to the Project pursuant to the terms of \_\_\_\_\_ Agreement dated \_\_\_\_\_, 20\_\_ by and between Tenant and Developer, as amended from time to time.

DATED the date first above written.

LANDLORD:

\_\_\_\_\_,  
a Washington nonprofit corporation

By \_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM:

TENANT:

STATE OF WASHINGTON,  
Acting through the Department of Social and  
Health Services

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant Attorney General

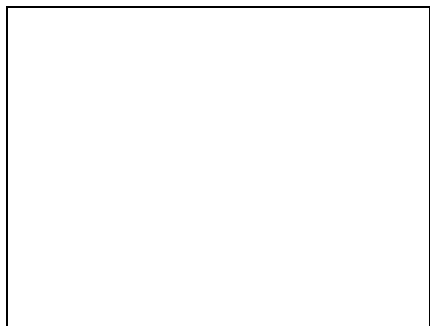
By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given Under My Hand and Official Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the DEPARTMENT OF \_\_\_\_\_, STATE OF WASHINGTON, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given Under My Hand and Official Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

## EXHIBIT A

### MONTHLY RENT

Annual Monthly Rent payable under this Lease during any Lease Year shall not exceed the aggregate amount of Monthly Rent payable in such Lease Year as set forth on the Estimated Schedule of Monthly Rent set forth below.

\* Total Debt Service equals Annual Monthly Rent for the period indicated.

### ESTIMATED

\* Annual Monthly Rent equals Debt Service for the period indicated.

Once the Bonds have been sold, the Underwriter[s] shall prepare and submit to Landlord, Tenant and Trustee the final schedule of Monthly Rent which shall include Monthly Rent that on an aggregate basis in any Lease Year does not exceed the aggregate amount of Monthly Rent payable in such Lease Year as set forth on the estimated schedule of Monthly Rent set forth above. Thereafter, Monthly Rent during any Lease Year shall be paid in the amounts set forth for each month during the Lease Year as set forth on such amended schedule of Monthly Rent and such amended schedule of Monthly Rent shall be substituted for the Exhibit A attached to this Lease as of the Effective Date. Thereafter all references to Monthly Rent payable under this Lease shall mean the amount of Monthly Rent payable during each Lease Year as set forth on such amended schedule of Monthly Rent, which shall be attached to this Lease as Exhibit A, as such schedule may hereafter be revised from time to time in accordance with the provisions of this Lease.

From and after the Commencement Date, the issuer administrative fee payable during any Fiscal Year shall be payable in an amount equal to one-half of one percent (.50%) of the Monthly Rent payments payable during such Fiscal Year. The issuer administrative fee is part of Operating Costs and is payable by the Tenant to the Landlord in accordance with the provisions of Section 10(e) of this Lease.

EXHIBIT B  
PROJECT SCHEDULE

EXHIBIT C

LAND

EXHIBIT D

CONFIRMATION OF COMMENCEMENT AND EXPIRATION DATES

In accordance with the provisions of Section 3 of the Lease as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Landlord and Tenant acknowledge, agree and confirm the following:

The Commencement Date of this Lease is: \_\_\_\_\_.

The Expiration Date of this Lease is: \_\_\_\_\_.

The foregoing agreement and confirmation shall be binding upon Landlord and Tenant and shall supersede and control over any other provision in the Lease regarding the Commencement Date and Expiration Date which might be construed other than as set forth in this Confirmation.

AGREED the day and year first above written.

LANDLORD:

,  
a Washington nonprofit corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

TENANT:

STATE OF WASHINGTON,  
Acting through the Department of Social and  
Health Services

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant Attorney General  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT E

MEMORANDUM OF LEASE

*RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:*

MEMORANDUM OF LEASE

GRANTOR:

GRANTEE: STATE OF WASHINGTON,  
Acting Through the Department of Social and Health Services

Legal Description:

Abbreviated form:

Additional legal on page Exhibit A of document

Assessor's Tax Parcel ID No(s):

Reference number(s) of Related Document(s):

(Additional on page \_\_\_\_ of document)

## MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (the "Memorandum") is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, a Washington nonprofit corporation ("Landlord") and the STATE OF WASHINGTON, acting through the Department of Social and Health Services ("Tenant").

1. Lease. Landlord has leased the real property described in Exhibit A attached hereto and by this reference incorporated herein (the "Premises") to Tenant at a rent and on the terms and conditions set forth in that certain Lease Agreement dated \_\_\_\_ \_\_, 20\_\_ by and between Landlord and Tenant (the "Lease"). The Lease is for a term of \_\_\_\_ (\_\_) years commencing \_\_\_\_ \_\_, 20\_\_ and shall expire \_\_\_\_ \_\_, 20\_\_ unless sooner terminated pursuant to the terms of the Lease; provided, however, that the Tenant's duty to pay Rent shall not commence until the Commencement Date.

2. Definition of Terms. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Lease.

3. Purpose of Memorandum. This Memorandum is prepared for purposes of recordation only and does not set forth all of the terms and conditions set forth in the Lease. In the event there is any conflict between the terms and conditions of the Lease and this Memorandum, the Lease shall control.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

LANDLORD:

\_\_\_\_\_,  
a Washington nonprofit corporation

By \_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM:

TENANT:

STATE OF WASHINGTON,  
Acting through the Department of Social and  
Health Services

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant Attorney General  
Date: \_\_\_\_\_

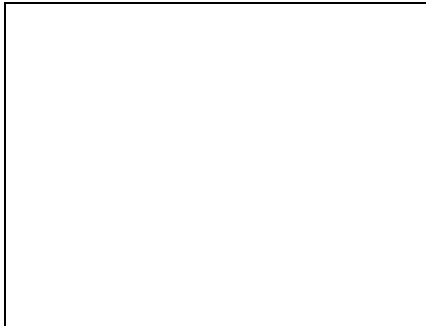
By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given Under My Hand and Official Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.



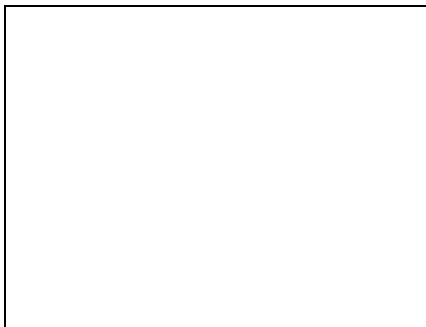
(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the DEPARTMENT OF SOCIAL AND HEALTH SERVICES, STATE OF WASHINGTON, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given Under My Hand and Official Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.



(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

## EXHIBIT A

Certain real property situated in King County Washington and more particularly described as follows:

## EXHIBIT F

### DISPUTE RESOLUTION PROCEDURE

Landlord and Tenant shall act in good faith and deal fairly in performing their respective duties under this Lease in order to accomplish their mutual objectives and avoid disputes. If a dispute arises with respect to design or construction of the Project, the parties agree to utilize the dispute resolution process contained herein, which will be non-binding but a condition precedent to having said dispute decided in court by a judge or jury.

1. **Mediation.** Pursuant to Section 9.6 of this Lease, in the event a dispute arises between Tenant and Landlord with respect to design and/or construction of the Project the parties shall proceed in good faith to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of the design and construction of the Project is not delayed. If, however, the parties are unable to resolve the dispute within three (3) business days, either party may refer the dispute to the Mediator named below.

*1.1 Mediator.* For any dispute which cannot be resolved by the parties, the mediator hereunder ("Mediator") shall be a mediator whom Landlord and Tenant have mutually designated to resolve such dispute. The Mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by Tenant and Landlord; however, the Mediator's recommendations concerning any such dispute are advisory only. The Mediator's recommendations shall be based on the pertinent Lease provisions, and the facts and circumstances involved in the dispute. The Mediator's recommendations shall be furnished in writing to the parties.

*1.2 Tenant Responsibility.* Tenant shall furnish the Mediator one copy of all documents it might have, other than those furnished by the Landlord, which are pertinent to the performance of the Mediator's duties hereunder.

*1.3 Landlord Responsibility.* Landlord shall furnish the Mediator one copy of all Contract Documents, including but not limited to the Building Design Guidelines, Plans and Outline Specifications, applicable contracts, interpretative reports, progress schedule and updates, monthly progress reports, and other documents pertinent to the performance of the Lease and necessary to the performance of the Mediator's duties hereunder.

*1.4 Term.* Following execution of this Lease, the Mediator shall have authority to act hereunder upon written request from either Landlord or Tenant and such authority shall terminate upon Final Acceptance, after Final Payment has been made.

*1.5 Payment.* The fees charged by the Mediator shall be shared equally by the parties. The Mediator's compensation shall include compensation for all materials, supplies, travel, office assistance and support and incidentals necessary to provide the services described herein. Payment for services rendered by the Mediator will be at the Mediator's standard hourly rate as approved by Landlord and Tenant prior to commencement of the dispute resolution proceeding.

*1.6 Legal Relationship.* The Mediator, in the performance of the duties described herein, is acting in the capacity of an independent agent and not as an employee of either Tenant or Landlord. The Mediator is absolved of any personal or professional liability arising from the recommendations made hereunder, unless due to gross negligence or willful malfeasance.

EXHIBIT G

PERMITTED EXCEPTIONS

1.

EXHIBIT H

FORM OF NOTICE OF ELECTION OF OPTION TO PURCHASE

[Date]

TO: Landlord

You are hereby notified that the State of Washington, acting through the Department of Social and Health Services ("Tenant"), has elected to exercise on [date of payment] its option to purchase the Premises currently leased by the Tenant pursuant to the Lease Agreement ("Lease") by and between Tenant and Landlord dated\_\_\_\_ \_\_, 20\_\_\_\_. This purchase option is being exercised pursuant to Section 31 of the Lease. Tenant is now, and on the date set forth above for payment will be, in full compliance with all terms and conditions of the Lease. In accordance with Section 31 of the Lease, Tenant shall purchase the Premises for a price set forth in Section 6.01 of the Indenture. On or prior to the date set forth above, Tenant shall also pay any Additional Rent then due and owing under the Lease.

APPROVED AS TO FORM:

TENANT:

STATE OF WASHINGTON,  
Acting through the Department of Social and  
Health Services

By\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant Attorney General  
Date: \_\_\_\_\_

By\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## EXHIBIT I

### MINIMUM INSURANCE REQUIREMENTS FOR DEVELOPER

#### Coverage:

Coverage shall be at least as broad as:

(i) General Liability: Insurance Services Office form number (CG 00 01 10 01 form or its equivalent) covering Commercial General Liability, including coverage for completed operations/products liability and contractual liability with a limit of not less than \$\_\_\_\_\_ combined single limit per occurrence, \$\_\_\_\_\_ aggregate. Developer shall maintain such Commercial General Liability Insurance Policy for at least \_\_\_\_ (\_\_) year[ ] after Final Acceptance.

(ii) Automobile Liability: Insurance Services Office form number (CA 00 01) covering Business Automobile Coverage, symbol 1 “any auto”; or the combination of symbols 2, 8, and 9, with a limit of not less than \$\_\_\_\_\_ combined single limit per occurrence.

(iii) Workers’ Compensation: Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.

(iv) Employer’s Liability or “Stop Gap”: The protection provided by the Workers’ Compensation Policy, Part 2 (Employer’s Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the General Liability Policy in the amount of at least \$\_\_\_\_\_.

During the period of construction, Developer as construction manager shall also provide:

(v) Builder’s Risk Insurance: Builder’s All Risk Coverage Form, including earth movement to agreed upon limits, covering 100% of the replacement cost of the Project and consistent with the requirements of the Development Agreement. Developer shall keep the Builder’s Risk Insurance in place from the commencement of construction of the Project until the Commencement Date defined in this Lease.

#### Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by Landlord and Tenant. The deductible and/or self-insured retention of the policies shall be the sole responsibility of Developer.

#### Other Insurance Provisions:

The insurance policies required under the Development Agreement are to contain or be endorsed to contain the following provisions where applicable:

(A) Liability Policies:

(i) Landlord, Tenant and Trustee and their officers, officials, employees and agents are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Developer in connection with the Development Agreement.

(ii) Developer's insurance coverage shall be primary insurance as respects Landlord, Tenant and Trustee, their officers, officials, employees and agents and shall include a severability of interests (cross liability). Any insurance and/or self-insurance maintained by Landlord and/or Tenant, their officers, officials, employees and agents shall not contribute with Developer's insurance or benefit Developer in any way.

(iii) Developer's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) All Policies.

Coverage shall not be canceled until after \_\_\_\_\_ ( ) days' ( ) days for non-payment of premiums) prior written notice has been given to Landlord, Trustee and Tenant.

(C) Acceptability of Insurers.

Unless otherwise approved by Landlord and Tenant, insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with minimum surpluses the equivalent of Best's surplus size VIII.

If, at anytime, any of the foregoing policies shall fail to meet the above minimum standards, Developer shall, upon notice to that effect from Landlord promptly obtain a new policy, and shall submit the same to Landlord, with certificates and endorsements, for approval.

(D) Verification of Coverage.

Developer shall furnish Landlord with certificates of insurance and endorsements required by the Development Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer. The certificates are to be on standard insurance industry ACORD form 25-S or equivalent with required endorsements attached and are to be received and approved by Landlord and Tenant prior to the commencement of activities associated with the Development Agreement. Landlord and Tenant reserve the right to require Developer to request and deliver complete certified copies of all required policies at any time.

(E) Subcontractors.

Developer shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of the Development Agreement shall be subject to all of the requirements stated herein.



For All Coverages:

(A) Each insurance policy shall be written on an “occurrence” form, excepting that insurance for professional liability, errors and omissions, when required, may be acceptable on a “claims made” form.

(B) If coverage is approved (if such approval is required above) and purchased on a “claims made” basis, Developer warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is subject to said insurance.

(C) By requiring such minimum insurance, Landlord and/or Tenant shall not be deemed to, or construed to, have assessed the risks that may be applicable to Developer associated with the Development Agreement. Developer shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage.

(D) Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(ies). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within the Lease Agreement.

## EXHIBIT J

### MINIMUM INSURANCE REQUIREMENTS FOR GENERAL CONTRACTOR

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(ies). Nothing contained within these provisions shall affect and/or alter the application of any other provision contained within General Construction Contract.

#### Scope and Limits of Insurance:

Coverage shall be at least as broad as:

(i) General Liability: Insurance Services Office form number (CG00 001) covering Commercial General Liability, with a limit of not less than: \$\_\_\_\_\_ combined single limit per occurrence, \$\_\_\_\_\_ aggregate. General Contractor shall maintain such General Contractor Liability Insurance for at least \_\_\_\_ (\_\_) year[ ] after Final Acceptance.

The policy shall include but not be limited to:

- (a) coverage for premises and operations;
- (b) contractual liability (including specifically liability assumed in the General Construction Contract);
- (c) products and completed operations and
- (d) Employers Liability or “Stop-Gap” coverage.

The policy shall not exclude:

(a) coverage for lateral support, underground, explosion or collapse hazards

(ii) Automobile Liability: Insurance Services Office form number (CA 00 01) covering Business Automobile Coverage, symbol 1 “any auto”; or the combination of symbols 2, 8, and 9, for a limit of not less than \$\_\_\_\_\_ combined single limit per occurrence.

(iii) Workers’ Compensation: Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.

(iv) Employer’s Liability or “Stop Gap”: The protection provided by the Workers’ Compensation Policy, Part 2 (Employer’s Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the General Liability Policy in the amount of at least \$\_\_\_\_\_.

#### Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by Landlord and Tenant. The deductible and/or self-insured retention of the policies shall not limit or apply to Landlord, Tenant or Developer and shall be the sole responsibility of the General Contractor.

#### Other Insurance Provisions:

The insurance policies required by the General Construction Contract are to contain or be endorsed to contain the following provisions where applicable:

##### (A) Liability Policies:

(i) Landlord, Tenant and Trustee and Developer, their officers, officials, employees and agents are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the General Contractor in connection with the General Construction Contract.

(ii) The General Contractor's insurance coverage shall be primary insurance as respects Landlord, Tenant, Trustee and Developer, their officers, officials, employees and agents (but not necessarily as respects the General Contractor). Any insurance and/or self-insurance maintained by Landlord, Tenant and Developer, their officers, officials, employees and/agents shall not contribute with the General Contractor's insurance or benefit the General Contractor in any way.

(iii) General Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

##### (B) All Policies.

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after \_\_\_\_\_ (\_\_\_) days' (\_\_\_ days for non-payment of premiums) prior written notice has been given to Landlord, the Trustee and Tenant.

##### (C) Acceptability of Insurers.

Unless otherwise approved by Landlord and Tenant:

Insurance is to be placed with insurers with a Best's rating of no less than A: VIII, or, if not rated by Best's, with minimum surpluses the equivalent of Best's surplus size VIII.

If at any time any of the foregoing policies fail to meet the above minimum standards, the General Contractor shall, upon notice to that effect from Landlord, promptly obtain a new policy, and shall submit the same to Landlord, with certificates and endorsements, for approval.

(D) Verification of Coverage.

The Contractor shall furnish Landlord with certificates of insurance and endorsements required by this Agreement and the General Construction Contract. The certificates are to be on standard insurance industry ACORD form 25-S with required endorsements attached and are to be received and approved by Landlord and Tenant prior to the commencement of activities associated with the General Construction Contract. Landlord and Tenant reserve the right to require complete certified copies of all required policies at any time.

(E) Subcontractors.

Contractor may include all subcontractors as insureds under its policies, or may furnish separate certificates of insurance and policy endorsements from each subcontractor. The limits of liability required to be carried by any subcontractor shall be determined by the General Contractor, subject to the approval of Landlord, Tenant and Developer.

Contractors Indemnification:

Within the General Construction Contract between Landlord and the General Contractor, Landlord shall include the following General Contractor's indemnification provision:

Contractor shall protect, defend, indemnify and save harmless Landlord, Tenant and Developer, their officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from the General Contractor, its officers, employees agents and/or subcontractors of all tiers, acts or omissions, performance or failure to perform the General Construction Contract, to the maximum extent permitted by law or as defined by RCW 4.24.115, as now enacted or as hereinafter amended.

Contractor agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The General Contractor's obligations under this section shall include, but not be limited to:

(a) the duty to promptly accept tender of defense and provide defense to Landlord, Tenant and Developer at the General Contractor's own expense.

(b) the duty to indemnify and defend Landlord, Tenant and Developer from any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the General Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects Landlord, Tenant and Developer only, and only to the extent necessary to provide Landlord, Tenant and Developer with a full and complete indemnity and defense of claims made by the General Contractor's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

(c) To the maximum extent permitted by law, the General Contractor shall indemnify and defend Landlord, Tenant and Developer from and be liable for all damages and injury which shall be caused to owners of property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of the General Construction Contract, whether or not such injury or damage is caused by negligence of the General Contractor or caused by the inherent nature of the work specified.

In case any suit or legal proceedings is brought against Landlord, Tenant and/or Developer or any of their officers, officials, employees or agents, on account of loss or damage sustained by any person or property as a result of the performance of the General Construction Contract, whether or not such injury or damage is due to the negligence of the General Contractor and whether or not such injury or damage is caused by the inherent nature of the work specified, the General Contractor agrees to assume the defense thereof and to pay all expenses connected therewith on behalf of Landlord, tenant and/or Developer, their officers, officials, employees and agents.

Landlord may, in its sole discretion, (1) withhold amounts sufficient to pay the amount of any property damage or bodily injury claim (claim for injury) and/or (2) pay any property damage claim (for injury) of which Landlord may have knowledge, regardless of the formalities of notice of such claim, arising out of the performance of the General Construction Contract.

An amount withheld will be held until the General Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment on such claim. In addition, the General Contractor shall reimburse and otherwise be liable for claims costs incurred by Landlord, Tenant and/or Developer including without limitation costs for claims adjusting services, attorneys, engineering and administration. In the event Landlord, Tenant or Developer incurs any judgment, award and/or costs arising therefrom, including attorney's fees to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from Developer.